E J Hammond

From

Wm H B Brown

U.S. Circuit court (6th circuit)

RULES

OF THE

Circuit and District Courts

OF THE

UNITED STATES,

FOR THE

DISTRICTS OF MICHIGAN,

In Cases at Law, In Equity, Admiralty, and Bankruptcy.

WITH ANNOTATIONS.

ADOPTED SEPTEMBER, 1878.

DETROIT:
RICHMOND, BACKUS & CO., LAW BOOK PUBLISHERS.

1878.

PUBLISHERS' NOTE.

The delayed appearance of these rules, announced long since, has been occasioned, in part, by the destruction of a portion of the matter by fire, and the consequent additional work necessitated.

The annotations, with citations of cases by *title* and page, will, we trust, prove a feature of the work of value equal to the painstaking labor and additional expense made necessary by their addition.

We are under obligations to Hon. H. B. BROWN, Judge of the Eastern District, for the compilation and preparation of this work, and to THOS. H. ACKERMAN, Esq., Attorney-at-Law, Detroit, who kindly assisted in the preparation of the citations by title, etc.

R., B. & Co.

By orders of the Circuit and District Courts of the United States for the Eastern and Western Districts of Michigan, the following rules were ordered to take effect from and after the first Tuesday of September, A. D. 1878, all other rules being repealed.

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CIRCUIT & DISTRICT COURTS.

EASTERN DISTRICT:

AT DETROIT, FIRST TUESDAYS OF MARCH, JUNE AND NOVEMBER.

AT PORT HURON (DISTRICT COURT), FOURTH TUESDAYS IN MAY AND OCTOBER.

WESTERN DISTRICT:

AT GRAND RAPIDS, FIRST TUESDAYS IN MARCH AND OCTOBER.

AT MARQUETTE, FIRST TUESDAYS IN MAY AND SEPTEMBER.

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RULES OF THE CIRCUIT COURTS

OF THE

UNITED STATES,

FOR THE

DISTRICTS OF MICHIGAN,

IN CASES AT LAW.

1

ADMISSION OF ATTORNEYS.

All attorneys and counselors at law, of good standing, who have been admitted to practice in the courts of this State, or in the Supreme or any Circuit Court of the United States, shall, on motion, be admitted to practice in this court. They shall take an oath to support the Constitution of the United States, and that, as attorneys and counselors of this court, they will faithfully discharge their duties to the best of their ability.

2

SERVICE OF NOTICES, ETC.

1. All notices shall be in writing and shall be served on the attorney in the cause.

2. Notices and papers may be served on an attorney by delivering the same to him personally, or by leaving the same with his clerk in his office,

or with a person having charge thereof; or, when no person is to be found in the office, by leaving the same, between the hours of six in the morning and nine in the evening, in some suitable and conspicuous place in such office; or, if the office be not open, so as to admit of service therein, then by leaving the same at the attorney's residence with some person of suitable age and discretion.

3. When opposing attorneys have their offices in different towns, cities or villages, service of notices and papers may be made by depositing the same, properly directed and with postage paid, in the post office; and in such case the time of service must be increased one day for every fifty miles distance between the place of deposit and the place of address. When a party, other than an attorney of this court, prosecutes or defends in person, the service of notices or papers may be made on such party in like manner personally or by mail.

Chamberlain v. O'Keefe, *2 Mich., 357;* Corey v. Hiliker, *15 Mich., 314;* Raymond v. Hinckson *15 Mich., 517;* McCaslin v. Camp, *26 Mich., 390.*

4. No service of notice or paper in the ordinary proceedings of a cause shall be necessary to be made on a defendant who has not appeared therein, except when the defendant is returned imprisoned for want of bail; in which case a copy of the declaration shall be delivered to him, or to the officer in whose custody he shall be; and when an exception is entered to bail, and no notice of the retainer of an attorney to defend is given, notice of such exception shall be delivered to the marshal or one of his deputies.

3

AGREEMENTS TO BE IN WRITING.

No private agreement or covenant between the parties or their attorneys in respect to the proceedings in a cause shall be binding, unless evidence thereof shall be in writing, subscribed by the party or his attorney, against whom the same shall be alleged.

Campbell v. Barclay, *4 Biss., 517;* Am. Saddle Co., v. Hogg, *6 Fish., 67;* Scott v. Scott, *5 Mich., 106;* People ex rel. Roche v. Judge Branch Circuit, *26 Mich., 370;* Stearns v. Taylor, *27 Mich., 88;* Campau v. Traub, *27 Mich., 215;* Macomber v. Saxton, *28 Mich., 516;* Palmiter v. Pere Marq. Lumber Co., *31 Mich., 183.*

4

SECURITY FOR COSTS.

The Clerk shall require of all non-resident plaintiffs of this district security for costs. The following form indorsed on the writ or declaration, or upon a separate paper entitled and filed in the cause, may substantially be pursued: I (A. B.) acknowledge myself security for all costs for which the ——— may become liable in this suit.

The surety shall be a resident of this district unless the court for sufficient cause direct the acceptance of a non-resident as such surety.

If the plaintiff in any suit where security for costs has been given, as above provided, shall fail or neglect to pay any costs for which he is liable for ten days after the final determination of the suit, the person to whom such costs are due may have judgment and execution against the surety for the amount so due, upon motion filed, and ten days' notice thereof, in writing, to such surety.

In cases removed from a State court the party in whose behalf the case is removed, if a non-resident of the district, shall, on filing a copy of the record in such suit, give security for costs in like manner as is required of non-residents in cases commenced in this court. In default thereof it shall be competent for the opposite party upon the usual notice to have the case dismissed.

R. S., *sec. 857;* C. L., *sec. 6133.*

5

WHAT DENOMINATED COMMON, AND WHAT SPECIAL RULES. ENTRY OF COMMON RULES.

Every rule to which a party would, according to the practice of the court, be entitled of course, without showing special cause, shall be denominated a common rule; and every other rule shall be denominated a special rule. All common rules, and all rules by consent of parties, shall be entered with the clerk at his office, in a book to be provided by him for that purpose, to be called the "common rule book," and may be entered at any time, as well in vacation as during term; and the day when the rule shall be entered shall be noted therein, and the party may enter such rule as he may conceive himself entitled to of course, but at his peril.

6

HOW TIME COMPUTED ON SERVICE OF PAPERS, ETC.

The day on which any rule shall be entered, or order, notice, pleading or paper served, shall be excluded in the computation of the time for complying with the exigency of such rule, order or notice, pleading or paper, and the day on which a

compliance therewith is required, shall be included, except where it shall fall on a Sunday, in which case the party shall have the next day to comply therewith. When by the terms of any order an act is directed to be performed instanter, it shall be done in twenty-four hours.

Anderson v. Baughman, *6 Mich., 298;* Corey v. Hiliker, *15 Mich., 314.*

7

MOTIONS.

All motions, except motions for continuance, shall be in writing, and filed with the Clerk, and shall have indorsed thereon the names of the parties and their respective attorneys. Notice of such motions, and copies of the affidavits, or papers on which they are based, shall be served on the opposite party.

At least two days' notice shall be given of the calling up for argument of any motion.

King v. Harrington, *14 Mich., 532;* Chesebro v. Chesebro, *21 Mich., 506;* McCaslin v. Camp, *26 Mich., 390.*

8

PAPERS TO BE INDORSED AND NOT TO BE TAKEN FROM CLERK'S OFFICE.

All papers shall be properly indorsed before filing the same, and the Clerk shall not suffer or permit any writ, pleading, affidavit, deposition, or other paper whatever on file in his office, to be taken therefrom without the order of the court or a judge thereof; but parties interested in any such may inspect the same in his office, and take copies thereof.

9

WRITS—WHEN RETURNABLE.

Writs by which actions are commenced may be made returnable on the first Tuesday of any month; provided, however, that no such writ shall be made returnable more than three months after the date thereof. Writs of *capias* issued while the court is in actual session, may be made returnable forthwith.

Nash v. Mallory, *17 Mich., 232, 332.*

10

BAIL—WHEN TO BE FILED.

In suits commenced by *capias*, the marshal shall file the appearance bail bond at the return of the capias; and special bail shall be filed within twenty days after the return day named in the writ; and the sureties may be required to justify according to the usages of law.

In re Stephenson, *32 Mich., 60;* De Myer v. McGonegal, *32 Mich., 120.*

11

IF SPECIAL BAIL INSUFFICIENT NEW TO BE GIVEN.

When special bail is required to justify, and the court shall declare the same insufficient, the defendant shall immediately give other sufficient special bail, or his appearance bail shall be liable on his bond, unless the defendant appear and is prayed into custody.

12

PROCEEDINGS WHEN SPECIAL BAIL NOT GIVEN.

When the defendant has been taken on a *capias ad respondendum*, and has given satisfactory ap-

pearance bail, but fails to appear and give special bail, the plaintiff may proceed to final judgment; which proceedings shall not release the appearance bail; and the plaintiff may obtain, in such a case, a judgment, also, against the appearance bail, on motion, and proof of service of notice of such motion, at least fifteen days before the motion is made.

13

JUDGMENT AGAINST SPECIAL BAIL.

When special bail is given, and an execution against the body has been returned not found, judgment may be rendered against such special bail for the amount of the judgment recovered and costs, upon a motion in open court, based upon service of a written notice to the special bail of at least thirty days.

14

APPEARANCE.

In suits commenced other than by *capias*, the defendant may appear by filing precipe for entry of his appearance with the clerk, and causing notice thereof to be served on the plaintiff or his attorney.

Wood v. Dixon, *1 Cr. C. C., 401;* French v. Venable, *2 Cr. C. C. 509;* Field v. Gibbs, *Pet. C. C., 155;* King of Spain v. Oliver, *2 Wash. C. C., 429;* Wheeler v. Wilkins, *19 Mich, 78;* Burson v. Huntington, *21 Mich., 415.*

15

TIME AND MANNER OF PLEADING—SERVICE OF PLEADINGS.

In all suits commenced by original writ, the plaintiff shall file his declaration within twenty

days after the return day of the writ. Within ten days after the time limited for filing the declaration, the defendant may cause notice of his appearance, or of retainer, to be served on the plaintiff. The plaintiff shall, within ten days after the time limited for serving such notice, serve upon the party giving such notice a copy of the declaration filed. The defendant, in suits so commenced, shall demur or plead to the declaration, and serve a copy of his demurrer or plea and notice, if any, upon the opposite party or his attorney, within twenty days after the service of a copy of the declaration. All subsequent pleadings, when admissible in suits so commenced, as well as in suits commenced by service of declaration shall be respectively filed, and copies served on the opposite party within ten days each after the other, until issue in fact or in law be joined. In all cases copies of pleadings shall be served within the time limited for filing the same, whether suit is commenced by original writ or otherwise.

16

FORMS OF DECLARATIONS.

The forms of declarations adopted under the new English rules prior to 1840, so far as they are not inconsistent with either the statutes of the United States or the peculiar organization of the circuit courts may be used, or the same may be drawn according to the forms heretofore in use.

17

DECLARATION — INSURANCE POLICIES — WARRANTIES, ETC.—GENERAL ISSUE—NOTICE.

In order to avoid needless prolixity, inasmuch as policies of insurance are generally issued upon

printed forms, of the contents of which the companies issuing them are fully advised, it shall not be necessary hereafter in declaring upon such policies to set forth specifically any more than the date and amount of the policy, the premium paid or to be paid, the property or risk insured, and the loss; and upon the trial, proofs may be made in the same way as if the declaration had set forth the policy in full. And in case the company or person issuing such policy shall rely, in whole or in part, upon the failure of the plaintiff to perform or make good any promise, representation or warranty, not contained in such policy, but set forth in any other paper or instrument in the hands of said insurer, the notice under the general issue shall declare the same, and indicate the breach relied on.

Throop v. No. Am. Fire Ins. Co., *19 Mich., 423;* The Clay Fire and Marine Ins. Co. v. The Huron Salt and Lumber M'f'g Co., *31 Mich., 423;* The Home Ins. Co., etc., v. Curtis, *32 Mich., 402.*

18

AMENDMENT, ON PLEA OF NON-JOINDER.

When the defendant in any action founded on contract shall plead in abatement the non-joinder of any other person as defendant, the court in term time, or the judge in vacation, may, at any time before issue joined on such plea, allow the plaintiff, on such terms as the court or judge shall prescribe, to amend his declaration by inserting therein the name of any other person as defendant, and declaring against him jointly with the original defendant. The plaintiff may thereupon take out

a writ, in such form as the court or judge shall prescribe, which shall be in the nature of a summons, and shall require the new defendant to appear and answer as defendant in the original action; and such writ shall be served as in other cases. Upon the return of such writ, every person named therein as defendant shall be bound to appear and answer with the other defendants, in the same manner as if they had all been originally made parties.

19

DEMURRER TO BE SPECIAL—AMENDMENT ON DEMURRER.

When either party shall demur to any pleading, he shall briefly but plainly specify the objections, in matters of substance as well as those of form, upon which he intends to rely on the argument; and if the pleading shall be adjudged bad for any cause not so specified, the party pleading, when allowed to amend on terms, will be permitted to do so without costs.

Dayton v. Williams, *2 Doug., 31;* Stevens v. Osman, *1 Mich., 92, 2 Mich., 275;* Tefft v. McNoah, *9 Mich., 201;* Teller v. Willis, *12 Mich., 389.*

20

PLEAS IN ABATEMENT OR TO THE JURISDICTION.

Pleas in abatement or to the jurisdiction, and all other dilatory pleas, shall be filed without any rule for a special or general special imparlance, within ten days after filing and service of declaration.

Gilbert v. Hanford, *13 Mich., 40;* Swartwout v. Mich. Air Line R. R. Co., *24 Mich., 389;* Hinman v. Eakins, *26 Mich. 30.*

21

GENERAL ISSUE.

The general issue may be made in the following form: "The defendant comes and demands a trial of the matters set forth in the plaintiff's declaration;" and the form of a demurrer may be as follows: "The said defendant says that the said declaration is not sufficient in law," showing the special cause of demurrer, if any; and a joinder in demurrer may be made as follows: "The plaintiff says that the said declaration is sufficient in law."

Myers v. Carr, *12 Mich., 63;* Taff v. Hosmer, *14 Mich, 309;* Gilbert v. Hanford, *13 Mich., 40;* Ingalls v. Eaton, *25 Mich., 32,* Miller v. Finley, Jr., *20 Mich, 249;* Wilson et al. v. Wagar, *26 Mich., 452;* Rawson v. Finlay, *27 Mich., 268;* Hill v. Callaghan, *31 Mich., 424;* L. S. B'ld'g Co. v. Thompson, *32 Mich., 293.*

22

AMENDMENT OF PLEADINGS.

1. The plaintiff may at any time before the default for not replying to a plea or a demurrer shall be entered, amend his declaration; and thereafter either party may, before default for not answering shall be entered, amend the pleading to be answered. If the pleading be such as does not require to be answered, it may be amended under this rule only within ten days after filing the same. The respective parties may amend under this rule of course and without costs, but shall not be entitled so to amend more than once. Under this rule new counts, pleas or notices may be added.

2. No rule to amend shall be required, but a copy of the amended pleading or notice, indorsed "amended narr," "plea," "notice," etc. (as the case may be), shall be filed and served, with a notice that the same is a copy of the pleading or notice as amended. And the time to plead or answer shall be from the day of service of such copy of the amended pleading.

U. S. v. Hool, *1 Cr. C. C., 116;* Marsteller v. McLean, *2 Cr. C. C,, 8;* U. S. Bank v. Roberts, *2 Cr. C. C. 15; 3 Cr. C. C., 353;* Matheson's Adm'r v. Grant's Adm'r, *2 How., 263;* Nelson v. Barker, *3 McLean, 379;* Smith v. Jackson, *1 Paine, 486;* Randolph Ex'r v. Barrett Ex'r, *16 Pet., 138;* Wilson v. Barnum, *1 Wall. C. C., 353;* Clark Ex'r v. Lohrer Ex'r, *1 W. & M.. 368;* Fielder v. Carpenter, *2 W. & M., 211;* People ex rel. Drew v. Judges Washtenaw Circuit, *1 Doug., 434;* People ex rel. Hensler v. Judge Wayne Circuit, *13 Mich., 206;* Ripley v. Davis, *15 Mich., 75;* Final v. Backus, *18 Mich., 218;* Tupper Adm. v. Killduff, *26 Mich., 394;* Borden v. Clark, *26 Mich., 410;* Polhemus v. Ann Arbor Savings B'k, *27 Mich., 44;* People ex rel. Gorman v. Judge Newaygo Circuit, *27 Mich., 138;* Long v. Judge Wayne Circuit, *27 Mich, 164*; D. H. & I. R. R. Co. v. Forbes, *30 Mich., 165.*

23

BILLS OF PARTICULARS.

1. In cases in which the defendant is entitled to demand a bill of particulars, the plaintiff shall file and serve such bill, unless it has been already filed and served, on being served with a notice requiring the same. And the defendant shall have like time to plead after receiving the bill of particulars, to which he was entitled at the time of serving such notice.

2. If the plaintiff shall unreasonably neglect to furnish a bill of particulars, or if the bill of particulars delivered be insufficient, the court may, in its discretion, non-suit the plaintiff, allow farther time to furnish it, or require a more particular bill to be delivered.

3. In cases where it is competent for the plaintiff to call upon the defendant for a bill of the particulars of his set-off, the defendant shall file and serve such bill, unless already filed and served, on the written request of the plaintiff or his attorney; and in case it be not filed and served within thirty days after such request, the court may exclude all testimony touching it.

Williams v. Sinclair, *3 McLean, 289;* Ches. & O. Canal Co. v. Knapp, *9 Pet., 541;* Pres., etc., of U. S. Bank v. Lyman, *1 Bl. C. C., 297;* Bailey v. Sutton, *1 Cr. C. C., 551;* Davis v. Freeman, *10 Mich., 188;* Kelly v. Waters, *31 Mich., 404.*

24

DEFAULTS.

If either party shall make default in filing and serving any pleading or notice within the time limited by rule, the opposite party may have his default entered in the common rule book.

25

PLAINTIFF NOT BOUND TO ACCEPT PLEA AFTER DEFAULT, EXCEPT, ETC.

The defendant's default being duly entered, the plaintiff shall not be bound afterwards to accept a plea, unless the defendant as soon as he shall know that the default has been entered, shall serve an affidavit of merits, plead issuably, and pay or tender the costs of the default.

26

DEFAULTS, HOW MADE ABSOLUTE—REFERENCE TO CLERK OR JURY—ASSESSMENT AFTER PLEA WITHDRAWN.

The party in whose favor default may have been entered in term or in vacation, may at any time, after four days in term shall have intervened, or if entered in term time, then at any time after the expiration of four days thereafter, or in such other time as may be ordered by the court, have a rule entered in the common rule book to make such default absolute, and for such judgment as the party is entitled to by reason of the default. If such default be taken by plaintiff for want of plea, he may, by said rule, in cases where it is competent, make reference to the clerk to assess the damages; and in other cases said rule shall direct that the assessment be made by a jury. When a plea is withdrawn the case shall stand as on default absolute, and damages may be assessed at any time thereafter.

Prentis v. Spalding, *2 Doug., 84;* O'Flynn v. Holmes, *8 Mich., 95;* Wilcox v. Sweet, *24 Mich., 355;* Howard v. Tomlinson, *27 Mich., 168.*

27

AFFIDAVIT OF PARTNERSHIP.

In all actions brought by persons claiming as partners, or by foreign corporations, the plaintiffs may, at the time of filing their declaration, cause to be filed with the clerk an affidavit stating that the plaintiffs were the persons composing such partnership, or existed as such foreign corporation under the laws of some other State, territory, or

country to be specified, at the time the contract in question was made, or the cause of action accrued, and serve a copy thereof on the defendant or his attorney with such declaration, which service may be made and proved in like manner with that of the declaration; and such affidavit shall be *prima facie* evidence of such existence of such partnership or corporation; *provided, however,* that if the defendants, or any of them, shall make and file with their plea a counter affidavit stating that he or they have reason to believe, and do believe, that such partnership or corporation did not exist as set forth in the plaintiffs' affidavit, it shall be incumbent on the plaintiffs to prove such partnership or corporation.

28

EXECUTION OF WRITTEN INSTRUMENT ADMITTED IF NOT DENIED ON OATH.

Upon the plea of the general issue in an action upon any written instrument, under seal or without seal, the plaintiff shall not be put to the proof of the execution of the instrument or the handwriting of the defendant, unless the defendant or some one in his behalf shall file and serve a copy of an affidavit denying the same, and this rule shall apply in actions brought against indorsers as well as other parties, and shall also apply in favor of a defendant in cases where claims by way of set-off are insisted upon by him. Such affidavit shall be filed, when by the defendant, with the plea, and when by the plaintiff, within ten days after service of the specific set-off claimed; but the court may, upon proper showing, enlarge the time for filing such affidavit.

Pegg v. Biddleman, *5 Mich.*, *26;* Hoard v. Little, *7 Mich.*, *458; 10 Mich.*, *113;* Burson v. Huntington, *21 Mich.*, *415;* Hunter v. Parsons, *22 Mich.*, *96;* Gibbs v. Linabury, *22 Mich.*, *479;* Spicer v. Smith, *23 Mich.*, *96;* McCormick v. Bay City, *23 Mich.*, *457;* Clay F. & M. Ins. Co. v. Huron Salt & Lumber M'f'g Co., *31 Mich.*, *346;* Thomas v. Clark, *2 McLean, 194;* Pratt v. Willard, *6 McLean, 27;* Benedict v. Maynard, *6 McLean, 21;* Hunley v. Willis, *5 Port.*, *157;* Pickering v. Pulsifer, *4 Gilman, 82;* Frye v. Menkins, *15 Ill.*, *339;* Pursley v. Morrison, *7 Ind.*, *356;* Hoefgar v. Harrison, *7 Ind.*, *594;* Somers v. Harris, *16 Ohio, 262.*

29

COMMISSIONS.

Commissions to take the depositions of witnesses residing without the district, or more than one hundred miles from the place of trial, may issue in all cases where necessary when any case is at issue, or in default, by consent of the parties in writing, or by order of the court in term, or of a judge thereof in vacation.

The interrogatories to be attached to such commission shall be settled by a judge or commissioner of this court, and the proceedings upon the settlement of such interrogatories, and upon the execution and return of such commission shall conform in all respects to the practice of the courts of this State.

Wellford v. Miller, *1 Cr. C. C.*, *485;* Dunlaps v. Munroe, *1 Cr. C. C. 536;* Irving v. Sutton, *1 Cr. C C.*, *575;* Gustine v. Ringgold, *4 Cr. C. C.*, *191;* Frevall v. Bache, Adm'r, *5 Cr. C. C.*, *463;* Vanstophorst v. Maryland, *2 Dall.*, *401;* Cunningham v. Otis, *1 Gall.*, *166;* U. S. v. Parrott,

1 McAl., 447; Peters v. Prevost, *1 Paine. 67;* Keene v. Meede, Ex'r, *3 Pet., 1;* Stein v. Bowman, *13 Pet, 209;* Lessee of Rhoades, etc., v. Selin, *4 Wash. C. C., 716.*

30

OBJECTIONS TO DEPOSITIONS, WHEN TO BE MADE.

All objections of form as to the taking of depositions to be read in evidence, shall be filed in writing before the cause is called for trial.

U. S. v. One Case of Hair Pencils, *1 Paine, 400;* Hosey v. White Pigeon Beet Sugar Co., *1 Doug., 193, 4 Mich., 554;* Facey v. Otis, *11 Mich., 213;* Angell v. Rosenbury, *12 Mich., 241;* Cook v. Bell, *18 Mich., 387;* Parsons v. Dickinson, *23 Mich., 56.*

31

NOTICES OF TRIAL.

Notices of trials of all civil issues of fact, and of the hearing of all appeals from the District Court, shall be served at least fourteen days before the first day of the term of court at which the trial is intended to be had. Issues of law may be brought on at any time upon five days' notice. Notice of the trial of issues of fact in cases removed from a State court before the first day of a term may be served at any time fourteen days before a copy of the record is required to be entered in this court.

Small v. Edrick, *5 Wend., 137;* Dousman v O'Malley, *1 Doug., 450;* Storey v. Child, *2 Mich., 107;* Brushaber v. Stegemann, *22 Mich., 199.*

32

NOTES OF ISSUE.

In all civil cases where a party or attorney desires that a case may be placed on the docket for

any term, for trial or argument, he shall file with the clerk the proper note of issue at least eight days before the commencement of such term. Such note of issue shall state the names of the parties and their attorneys, and the class of the docket to which the case belongs.

33

CALENDARS, HOW MADE UP.

Previous to each term the clerk shall prepare a calendar of civil cases for said term, and cause the same to be printed.

Appeal cases shall be entered under the head of "Appeal Cases" in the order of filing the appeal in each case, and shall stand first upon the docket.

All cases in which issues of fact have been joined, and notes of issue filed, shall be separately arranged under the head of "Issues of Fact," in the order of the dates of issue. Cases for assessment shall be arranged separately under the head of "Imparlances." Cases in which issues of law have been joined, under the head of "Issues of Law."

34

INQUESTS.

The plaintiff in any action of covenant, debt, or assumpsit, on money bonds, promissory notes, or bills of exchange commenced hereafter, at issue as well as default, may have the same called out of its order on the calendar, and an inquest taken and judgment rendered thereon at the opening of the court on any day of the term after the first, in all cases where parties are sued in their individual capacity; unless the defendant, or his attorney shall,

before the first day of the term, have filed an affidavit of merits, and served a copy thereof on plaintiff's attorney; provided the intention of the plaintiff to take an inquest under this rule be expressed in the notice of trial.

Gurney v. Hoge, *6 Blatch., 499;* Cromwell v. Van Rensselaer, *3 Cow., 346;* Fitzhugh v. Truax, *1 Hill, 644;* Meech v. Calkin, *4 Hill, 534;* Philips v. Blagge, *3 Johns., 141;* Robb v. Moffatt, *3 Johns., 258, 3 Johns., 449;* Connor v. Titus, *5 Johns., 355;* Wilkes v. Hotchkiss, *5 Johns., 360;* Geib v. Icard, *11 Johns., 82;* Brown v. St. John, *19 Wend., 617;* Brownell v. Marsh *22 Wend., 636;* Brown v. Cowel, *2 Doug., 432;* People ex rel. Begole v. Judge Ionia Circuit, *32 Mich., 61.*

35

MOTIONS FOR CONTINUANCE.

No motion for the continuance of a cause shall be heard after the first day in term, unless a sufficient excuse is shown for the delay. And on every application by a party for the continuance of a cause for the absence of a witness, the party so applying shall state, in addition to the usual requisites, the facts which he expects to prove by the absent witness, and shall also state with particularity the diligence he has used to procure his attendance. In case it is admitted by the opposite party in a civil cause that the witnesses named would, if placed on the stand, testify as stated in such affidavit, the motion for a continuance shall be denied, unless the court, for the furtherance of justice, shall deem a continuance necessary.

Smith v. Potts, *1 Cr. C. C., 123;* Manning v. Jamesson, *1 Cr. C. C., 285;* Norwood v. Sutton, *1 Cr. C. C., 327;* Woods v. Young, *1 Cr. C. C.,*

346; Union B'k of Georgetown v. Riggs, *2 Cr. C. C., 204;* Higgs v. Heugh, *3 Cr. C. C., 142;* Fowle v. Bowie, *3 Cr. C. C., 362;* Syme's Lessee v. Irvine, *2 Dall., 383;* Smith v. Barker, *3 Day, 280;* Anonymous, *3 Day, 308;* Read v. Haynie, *Hemp., 700,* Warburton v. Aken, *1 McLean, 460;* Stedman v. Hamilton, *4 McLean, 538.*

36

PLAINTIFF MAY DISCONTINUE AGAINST ANY DEFENDANT.

When an action founded on contract is brought against several persons, the plaintiff may, at any time before the final submission of the cause, be allowed to discontinue as against any of the defendants, upon the payment of costs to them, as in case of non-suit, and on such other terms as the court shall direct; and the plaintiff may thereupon amend his declaration, and proceed against the other defendants in like manner as if the action had been originally brought against them alone.

Winslow v. Herrick, *9 Mich., 380;* Yawkey v. Richardson, *9 Mich., 529;* Andre v. Fitzhugh, *18 Mich., 93;* Ballou v. Hill, *23 Mich., 60.*

37

STENOGRAPHERS.

Whenever either party to a civil action shall desire a shorthand report of the testimony or of any proceedings therein, and the court shall deem the cause a fit one to be reported, the court will direct full phonographic notes of the same to be taken, and to be, if desired by the parties to said cause, or by the court, forthwith fairly transcribed, the charges for the taking of said phonographic notes, or any transcription thereof, to be fixed by the

court, and forthwith to be paid under the order of the court, by the party requesting the same, or by both parties, equally, when such transcription shall be desired by the court, or by both parties.

Said charges for such notes and transcriptions shall be allowed and taxed in the bill of costs in said cause, as proper disbursement.

R. S., Sec. 918.

38

MOTIONS FOR NEW TRIAL.

Motions for new trial, with the reasons on which they are founded, shall be made within two days after the rendition of the verdict, in the case of a trial by jury; and where the cause has been tried by the court, two days after the decision of the court.

People v. Bay County Circuit Clerk, *14 Mich., 169;* People v. Judge Wayne Circuit, *20 Mich., 220.*

39

MOTIONS IN ARREST OF JUDGMENT.

Motions in arrest of judgment shall be made within the same time as motions for new trial, except when a motion for a new trial has been interposed and overruled; and then within two days after the motion is overruled.

40

WRITS OF EXECUTION.

Writs of execution or final process may be made returnable like mesne process, on the first Tuesday of any month, or any day in term, but such writs shall not be returnable in less than sixty days from

the date of issuing the same. In the levy and advertisement, as well as on all sales of real or personal estate hereafter to be had by virtue of said writs of execution issuing out of this court, the proceedings thereon shall in all respects be in conformity with the laws of the State of Michigan and the practice of the courts of said State, and the parties to such execution shall be entitled to the same rights and privileges given to them by virtue of the laws and practice aforesaid, the marshal and his deputies performing all the duties incumbent on the sheriff and his deputies under said laws and practice.

Beers v. Haughton, *1 McLean, 226;* Beers v. Haughton, *9 Pet., 329;* Lane v. Townsend, *Ware, 286;* Wyman v. Southard, *10 Wheat., 1;* U. S. Bank v. Halstead, *10 Wheat., 51.*

41

SELECTION OF JURIES.

The clerk and marshal shall, on the second Monday of November of each year, select not less than two hundred persons from different counties in the district—citizens of Michigan qualified to serve as jurors, to act as such for the ensuing year, and the names of such persons shall be placed in a box, to be kept under lock and key by the clerk, and at least twenty days before each term the clerk and marshal shall, in presence of the district attorney, impartially, and without prejudice or favor, draw out of the box the names of twenty-three such qualified citizens as grand jurors, and the names of twenty-four such qualified citizens as traverse jurors, in obedience to the venire which shall be issued commanding the marshal to summon the

same. Such persons so drawn to serve as grand or traverse jurors, shall be summoned by the marshal or his duly qualified deputies, in person, or by letter directed to the place of residence of the juror, and the venire shall be returned at such day in the term, and on such hour in the day as the judge directing it shall designate. A list of the drawn jurors shall, on the day of the drawing, be filed by the clerk in his office, subject to the inspection of the parties interested in the same. A list of the persons whose names are placed in the box, as above provided, shall also be kept on file in the clerk's office, and no person shall be drawn or serve as a juror (except as talesman in a particular case), whose name does not appear upon such list.

The clerk shall also keep a list of all jurors attending at any term of this court alphabetically arranged which shall be present at the drawing, and if the name of a juror who shall have attended as such within two years shall be drawn, a minute of such fact shall be entered, the name destroyed, and another name drawn.

U. S. v. Douglass, *2 Blatch., 203;* U. S. v. Reed, *2 Blatch, 435;* Alston v. Manning, *Chase, 460, 4 McLean, 105,* U. S. v. Wilson, *6 McLean, 604, 13 Wall., 424;* U. S. v. Collins, *1 Woods, 499;* U. S. v. Hammond, *2 Woods, 197.*

42

DRAWING OF JURORS.

The drawing of jurors shall be conducted as follows:

1. The clerk shall shake the box containing the names of jurors selected and placed therein as

specified in rule 41, so as to mix the slips of paper upon which said names are written as much as possible.

2. The marshal shall then publicly draw out of said box so many of said slips of paper containing such names as shall be necessary for grand jurors, and so many as shall be necessary for petit jurors, as specified in rule 41.

3. A minute of the drawing shall be kept by the clerk, in which shall be entered the name contained on every slip of paper so drawn, before any other slip shall be drawn.

4. If after the drawing the whole number required for grand or petit jurors the name of any person shall appear to have been drawn who is dead, or become insane, or who has permanently removed from the district, to the knowledge of any of the attending officers, an entry of such fact shall be made in the minutes of the drawing, and the slip of paper containing such name shall be destroyed.

5. Another name shall then be drawn in place of that contained on the slip of paper so destroyed, which shall, in like manner, be entered on the minutes of the drawing.

6. The same proceedings shall be had as often as may be necessary until the whole number of jurors required shall have been drawn.

7. The minutes of the drawing shall then be signed by the clerk and the attending officers, and filed in the clerk's office, as required by rule 41.

8. Separate writs of *venire facias* for the summoning of the persons so drawn for grand jurors, and of those drawn for petit jurors, shall be forth-

with issued by the clerk and delivered to the marshal of the district. Separate lists of the names of the persons so drawn, specifying their places of residence, shall also be prepared by the clerk and delivered to the marshal, together with the said writs.

43

OATHS AND AFFIDAVITS.

Jurats and affidavits to be used in this court may be verified before the clerk of any court of record, or before any notary public, provided, however, that when such clerk or notary is a non-resident of the district, his signature shall be attested by his official seal.

44

RULES OF STATE COURTS.

In cases where no special provision is made by these rules, the statutes and the rules of the circuit courts of this State shall govern the proceedings in this court.

SPECIAL RULES—WESTERN DISTRICT.

1

Hereafter the trial of issues of fact in civil cases will not be assigned out of order on the calendar unless demanded by some exigency.

BANKRUPT CASES.

Bankrupt cases ordered under section 41 of the bankrupt act to be tried by a jury will have precedence, and be placed at the head of the calendar for trial in the district court.

FIRST CALL OF CALENDAR.

There will be a preliminary call of the calendar on the first Tuesday of the term, on which day applications for continuance must be presented. All issues of fact in civil cases in which neither side is represented by some one in court to speak for the case, will be ordered continued for the term under this call.

SECOND CALL OF CALENDAR.

A peremptory call of issues of fact will begin at the opening of the court on the first Wednesday of the term, and be proceeded with in their order on the calendar. Four cases each day, and no more, will be on call. Under this call cases must be disposed of for the term, unless for some unforeseen and unavoidable reason further time is given, in which event the cause will go to the foot of the calendar, unless otherwise ordered by the court.

ADVANCING CASES OUT OF THEIR ORDER.

Whenever there is opportunity, and both sides consent, jury and non-jury cases may be advanced and tried out of their order.

CRIMINAL CASES.

Criminal trials in the circuit and in the district court will begin with the conclusion of trials of civil cases.

MOTIONS AND LAW ISSUES.

Saturday of each week, so far as necessary, will be devoted to hearing issues of law and motions.

2

THE ARGUMENT OF CASES.

Counsel will be limited to fifteen minutes in the opening statement of the case, and to one hour on a side in summing up the facts, unless the court enlarges the time.

3

DAY OF HEARING.

After the active business of the term is ended and the jury discharged, motions and applications to the court or judge will be heard only on Tuesdays of each week, unless some exigency demands earlier action. In case of the absence of the judge on any Tuesday, motions for hearing will stand continued until such Tuesday as the judge shall be present.

GENERAL EQUITY RULES

PRESCRIBED BY THE SUPREME COURT.

JANUARY TERM, A. D. 1842.

PRELIMINARY REGULATIONS.

1

The circuit courts, as courts of equity, shall be deemed always open for the purpose of filing bills, answers, and other pleadings, for issuing and returning mesne and final process and commissions, and for making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits.

Ewing v. Blight, *1 Phila.*, *576.*

2

The clerk's office shall be open, and the clerk shall be in attendance therein, on the first Monday of every month, for the purpose of receiving, entering, entertaining, and disposing of all motions, rules, orders, and other proceedings, which are grantable of course and applied for, or had by the parties, or their solicitors, in all causes pending in equity, in pursuanee of the rules hereby prescribed.

3

Any judge of the circuit court, as well in vacation as in term, may, at chambers, or on the rule days, at the clerk's office, make and direct all such interlocutory orders, rules and other proceedings, preparatory to the hearing of all causes upon their merits, in the same manner and with the same effect as the circuit court could make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party, or his solicitor, to appear and show cause to the contrary at the next rule day thereafter, unless some other time is assigned by the judge for the hearing.

4

All motions, rules, orders and other proceedings made and directed at chambers, or on rule days at the clerk's office, whether special or of course, shall be entered by the clerk in an order book, to be kept in the clerk's office, on the day when they are made and directed; which book shall be open, at all office hours, to the free inspection of the parties in any suit in equity, and their solicitors. And except in cases where personal or other notice is specially required or directed, such entry in the order book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all orders, rules, acts, notices, and other proceedings entered in such order book, touching any and all the matters in the suits to and in which they are parties and solicitors. And notice to the solicitors shall be deemed notice to the parties for whom they appear and whom they represent, in all

cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the same town or city, the judges of the circuit court may, by rule, abridge the time for notice of rules, orders, or other proceedings, not requiring personal service on the parties, in their discretion.

U. S. v. Parrott, *1 McAl., 447;* McLean v. Lafayette Bank, *3 McLean, 503;* Newby v. Or. Cent. R. Co., *1 Saw., 63.*

5

All motions and applications in the clerk's office for the issuing of mesne process and final process to enforce and execute decrees; for filing bills, answers, pleas, demurrers, and other pleadings; for making amendments to bills and answers; for taking bills pro confesso; for filing exceptions, and for other proceedings in the clerk's office, which do not, by the rules hereinafter prescribed, require any allowance or order of the court, or of any judge thereof, shall be deemed motions and applications, grantable of course by the clerk of the court. But the same may be suspended, or altered, or rescinded, by any judge of the court, upon special cause shown.

6

All motions for rules or orders and other proceedings, which are not grantable of course, or without notice, shall, unless a different time be assigned by the judge of the court, be made on a rule day, and entered in the order book, and shall be heard at the rule day next after that on which

the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not show good cause against the same, the motion may be heard by any judge of the court ex parte, and granted, as if not objected to, or refused, in his discretion.

PROCESS.

7

The process of subpœna shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill; and unless otherwise provided in these rules, or specially ordered by the circuit court, a writ of attachment, and, if the defendant can not be found, a writ of sequestration, or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court.

Picquet v. Swan, *5 Mas., 35.*

8

Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the circuit court in suits at common law in actions of assumpsit. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land, or the delivering up of deeds or other documents, the decree shall, in all cases,

prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court, or of a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party can not be found, a writ of sequestration shall issue against his estate, upon the return of non est inventus, to compel obedience to the decree.

9

When any decree or order is for the delivery of possession, upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court.

10

Every person not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the cause; and every person, not being a party in any cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such order as if he were a party in the cause.

SERVICE OF PROCESS.

11

No process of subpœna shall issue from the clerk's office in any suit in equity, until the bill is filed in the office.

12

Whenever a bill is filed, the clerk shall issue the process of subpœna thereon, as of course, upon the application of the plaintiff; which shall be returnable into the clerk's office the next rule day, or the next rule day but one, at the election of the plaintiff, occurring after twenty days from the time of the issuing thereof. At the bottom of the subpœna shall be placed a memorandum, that the defendant is to enter his appearance in the suit in the clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso. Where there is more than one defendant, a writ of subpœna may, at the election of the plaintiff, be sued out separately for each defendant, except in the case of husband and wife defendants, or a joint subpœna against all the defendants.

13

The service of all subpœnas shall be by a delivery of a copy thereof, by the officer serving the same, to the defendant personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some adult person who is a member or resident in the family.

Ward v. Seabry, *4 Wash., 426;* Ward v. Sebring, *4 Wash., 472;* Sawyer v. Gill, *3 W. & M., 97;* Hyslop v. Hoppock, *5 Ben., 533;* Weiberg v. The St. Oloff, *2 Pet. Adm'y, 428;* Segee v. Thomas, *3 Blatch., 11;* Robinson v. Cathcart, *2 Cr. C. C., 590;* Doe ex dem. v. Johnston, *2 McLean, 323;* K'y Silv. M'g Co. v. Day, *2 Saw., 468;* Hitner v. Suckley, *2 Wash., 465;* Read v. Consequa, *4 Wash., 174;* Eckert v. Bauert, *4 Wash., 370.*

14

Whenever any subpœna shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpœna, toties quoties, against such defendant, if he shall require it, until due service is made.

15

The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the court for that purpose, and not otherwise. In the latter case, the person serving the process shall make affidavit thereof.

Jobbins v. Montague, *5 Ben., 429.*

16

Upon the return of the subpœna, as served and executed upon any defendant, the clerk shall enter the suit upon his docket as pending in the court, and shall state the time of the entry.

[illegible]

APPEARANCE.

17

The appearance day of the defendant shall be the rule day, to which the subpœna is made returnable; provided he has been served with the process twenty days before that day; otherwise, his appearance day shall be the next rule day succeeding the rule day when the process is returnable.

The appearance of the defendant, either personally or by his solicitor, shall be entered in the order book, on the day thereof, by the clerk.

BILLS TAKEN PRO CONFESSO.

18

It shall be the duty of the defendant, unless the time shall be otherwise enlarged for cause shown, by a judge of the court, upon motion for that purpose, to file his plea, demurrer, or answer to the bill, in the clerk's office, on the rule day next succeeding that of entering his appearance. In default thereof, the plaintiff may, at his election, enter an order (as of course) in the order book, that the bill be taken pro confesso; and thereupon the cause shall be proceeded in ex parte, and the matter of the bill may be decreed by the court, at the next ensuing term thereof, accordingly, if the same can be done without an answer, and is proper to be decreed; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attach-

ment against the defendant to compel an answer; and the defendant shall not, when arrested upon such process, be discharged therefrom, unless, upon filing his answer, or otherwise complying with such order, as the court, or a judge thereof, may direct, as to pleading to or fully answering the bill within a period to be fixed by the court, or judge, and undertaking to speed the cause.

O'Hara v. McConnell, *93 U. S. 150.*

19

When the bill is taken pro confesso, the court may proceed to a decree at the next ensuing term thereof, and such a decree rendered shall be absolute, unless the court shall, at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit of the defendant. And no such motion shall be granted, unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct for the purpose of speeding the cause.

Scott v. Blaine, *Bald., 287;* Allen v. Thomas, *1 Cr. C. C., 294;* Stewart v. Smith, *2 Cr. C. C., 615;* McMicken v. Perin, *18 How., 507;* Kemball v. Stewart, *1 McLean, 332;* Piatt v. Oliver, *2 McLean, 281, 283;* Lincoln v. Tower, *2 McLean, 487;* Fellows v. Hall, *3 McLean, 281;* Cameron v. McRoberts, *3 Wheat., 591;* Suydam v. Beals, *4 McLean, 12;* Read v. Consequa, *4 Wash. C. C., 175;* Pendleton v. Evan's Ex'rs, *4 Wash. C. C., 336;* Pendleton v. Evan's Ex'rs, *4 Wash. C. C., 391.*

FRAME OF BILLS.

20

Every bill, in the introductory part thereof, shall contain the names, places of abode, and citizenship of all the parties, plaintiffs, and defendants, by and against whom the bill is brought. The form, in substance, shall be as follows: "To the Judges of the Circuit Court of the United States for the District of——, A. B., of——, and a citizen of the State of——, brings this, his bill, against C. D., of——, and a citizen of the State of ——, and E. F. of——, and a citizen of the State of——. And thereupon, your orator complains, and says that," etc.

Dodge v. Perkins, *4 Mason, 435;* Jackson v. Ashton, *8 Pet., 148;* K'y Silv. M'g Co. v. Day, *2 Saw., 468.*

21

The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth the matters or excuses, which the defendant is supposed to intend to set up by way of defense to the bill; also, what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurrable therefor. And the plaintiff may, in the narrative or stating part of the bill, state and

avoid, by counter-averments, at his option, any matter or thing which he supposes will be insisted upon by the defendant, by way of defense or excuse to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief; and if an injunction, or a writ of ne exeat regno, or any other special order pending the suit is required, it shall also be specially asked for.

Perry v. Corning, *7 Blatch., 195;* Dunham v. Eat. & Ham. R. R. Co., *1 Bond, 492;* Georgia v. Braiseford, *2 Dall., 405;* Taylor v. Merch. Fire Ins. Co., *9 How., 390;* Spooner v. McConnell, *1 McLean, 337;* Smith v. Foxall, *2 Pet., 595;* Union Bank of Georgetown v. Geary, *5 Pet., 99;* Harrison v. Nixon, *9 Pet., 483;* Boone v. Chiles, *10 Pet., 177;* Walden v. Bodley, *14 Pet., 156;* Hobson v. McArthur's Heirs, *16 Pet., 182;* Washington R. R. v. Bradleys, *10 Wall., 299;* Wilson v. Graham, *4 Wash., 53.*

22

If any person, other than those named as defendants in the bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason why they are not made parties, by showing them to be without the jurisdiction of the court, or that they cannot be joined without ousting the jurisdiction of the court as to the other parties. And as to persons who are without the jurisdiction, and may properly be made parties, the bill may pray that process may issue to make them parties to the bill, if they should come within the jurisdiction

Abbot v. Am. H'd Rub. Co., *4 Bl. C. C., 489;* Bunce v. Gallagher, *5 Bl. C. C., 481;* Barney v. Baltimore City, *6 Wall., 280;* Hoe v. Wilson, *9 Wall., 501.*

23

The prayer for process of subpœna in the bill shall contain the names of all the defendants named in the introductory part of the bill, and if any of them are known to be infants, under age, or otherwise under guardianship, shall state the fact, so that the court may take order thereon as justice may require, upon the return of the process. If an injunction, or a writ of ne exeat regno, or any other special order pending the suit, is asked for in the prayer for relief, that shall be sufficient without repeating the same in the prayer for process.

24

Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part that, upon the instructions given to him, and the case laid before him, there is good ground for the suit, in the manner in which it is framed.

Roach v. Hulings, *5 Cr. C. C., 637;* Dwight v. Humphreys, *3 McLean, 104.*

25

In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness, and directness in the allegation of bills and answers, the regular taxable costs for every bill and answer shall in no case exceed the sum which is allowed in the State Court of Chancery in the district, if

any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

SCANDAL AND IMPERTINENCE IN BILLS.

26

Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments, in hæc verba, or any other impertinent matter, or any scandalous matter not relevant to the suit. If it does, it may, on exceptions, be referred to a master by any judge of the court for impertinence or scandal, and if so found by him, the matter shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the court, or a judge thereof, shall otherwise order. If the master shall report that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the reference.

Nourse v. Allen, *4 Blatch., 376;* Perry v. Corning, *7 Blatch., 195;* Capen v. Flesher, *1 Bond, 440;* Gaines v. Chew, *2 How., 619;* Oliver v. Piatt, *3 How., 333;* McLean v. Lafayette Bank, *3 McLean, 415;* Gier v. Gregg, *4 McLean, 202;* Griswold v. Hill, *1 Paine, 390;* Langdon v. Goddard, *3 Story, 13;* Wood v. Mann, *1 Sum., 579.*

27

No order shall be made by any judge, for referring any bill, answer, or pleading, or other matter,

or proceeding depending before the court for scandal or impertinence, unless exceptions are taken in writing, and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent; nor unless the exceptions shall be filed on or before the next rule day after the process on the bill shall be returnable, or after the answer or pleading is filed. And such order, when obtained, shall be considered as abandoned, unless the party obtaining the order shall, without any unnecessary delay, procure the master to examine and report for the same on or before the next succeeding rule day, or the master shall certify that further time is necessary for him to complete the examination.

Oliver v. Piatt, *3 How., 333;* Nelson v. Hill, 5 *How., 127;* Surget v. Byers, *Hempst., 715;* U. S. v. Sturges, *1 Paine, 525.*

AMENDMENTS OF BILLS.

28

The plaintiff shall be at liberty as a matter of course, and without payment of costs, to amend his bill in any matters whatsoever, before any copy has been taken out of the clerk's office, and in any small matters afterwards, such as filling blanks, correcting errors of dates, misnomer of parties, misdescription of premises, clerical errors, and generally in matters of form. But if he amend in a material point (as he may do of course), after a copy has been so taken, before any answer or plea, or demurrer to the bill, he shall pay to the

defendant the costs occasioned thereby, and shall, without delay, furnish him a fair copy thereof, free of expense, with suitable references to the places where the same are to be inserted. And if the amendments are numerous, he shall furnish, in like manner, to the defendant, a copy of the whole bill, as amended; and if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

Capen v. Flesher, *1 Bond, 440;* Shields v. Barrow, *17 How., 130;* Holmes v Heirs of Trout, *1 McLean, 1;* Longworth v. Taylor, *1 McLean, 514;* Walden v. Bodley, *14 Pet., 156;* Peirce v. West's Ex'r, *3 Wash., 354;* Read v. Consequa *4 Wash., 175.*

29

After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any judge of the court, to amend his bill on before the next succeeding rule day, upon payment of costs, or without payment of costs, as the court, or a judge thereof, may, in his discretion, direct. But after replication filed, the plaintiff shall not be permitted to withdraw it and to amend his bill, except upon a special order of a judge of the court, upon motion or petition, after due notice to the other party, and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not, with reasonable diligence, have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the judge for speeding the cause.

Fisher v. Rutherford, *Bald.*, *188;* Goodyear v. Bourn, *3 Blatch.*, *266;* Wharton's Ex'rs v. Lowrey, *2 Dall.*, *364;* Snead v. McCoull, *12 How.*, *407;* Shields v. Barrow, *17 How.*, *130;* Hunt v. Rousemaniere, *2 Mason*, *342;* Ross v. Carpenter, *6 McLean*, *382;* Conolly v. Taylor, *2 Pet.*, *556;* Jackson v. Ashton, *10 Pet.*, *480;* Walden v. Bodley, *14 Pet.*, *156;* Neale v. Neales, *9 Wall.*, *1;* Wash. R. R. v. Bradleys, *10 Wall.*, *299;* Peirce v. West's Ex'r, *3 Wash.*, *354;* Duponti v. Mussy, *4 Wash.*, *128;* Tufts v. Tufts, *3 W. & M.*, *457.*

30

If the plaintiff so obtaining any order to amend his bill, after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the clerk's office, on or before the next succeeding rule day, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

Marshall v. Vicksburg, *15 Wall.*, *146.*

DEMURRERS AND PLEAS.

31

No demurrer or plea shall be allowed to be filed to any bill unless upon a certificate of counsel that, in his opinion, it is well founded in point of law, and supported by the affidavit of the defendant that it is not interposed for delay; and, if a plea, that it is true in point of fact.

Goodyear v. Toby, *6 Bl. C. C.*, *130;* Newby v. Oregon Cent. R. Co., *1 Saw.*, *63;* Ewing v. Blight, *3 Wall. Jr.*, *134;* Sims v. Lyle, *4 Wash.*, *301.*

32

The defendant may, at any time before the bill is taken for confessed, or afterwards, with the leave of the court, demur or plead to the whole bill, or to part of it, and he may demur to part, plead to part, and answer as to the residue; but in every case, in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea, and explicitly denying the fraud and combination and the facts on which the charge is founded.

Atwill v. Ferrett, *2 Blatch., 39;* Maxwell v. Kennedy, *8 How., 210;* Rhode Island v. Massachusetts, *15 Pet., 233;* Foster v. Swasey, *2 W. & M., 217;* Pierpont v. Fowle, *2 W. & M. 23;* Wisner v. Barnett, *4 Wash., 631;* Gallagher's Ex'rs v. Roberts, *1 Wash., 320.*

33

The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.

Meyers v. Dorr, *13 Blatch., 22;* Gallagher's Ex'rs v. Roberts, *1 Wash., 320.*

34

If, upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period, unless the court shall be satisfied that the defendant had good ground, in point of law or fact, to interpose the same, and it was not interposed vexatiously or for

delay. And upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule day, or at such other period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the court, be reasonably done; in default whereof, the bill shall be taken against him pro confesso, and the matter thereof proceeded in and decreed accordingly.

Poultney v. City of Lafayette, *3 How., 81.*

35

If, upon the hearing, any demurrer or plea shall be allowed, the defendant shall be entitled to his costs. But the court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill upon such terms as it shall deem reasonable.

36

No demurrer or plea shall be held bad, and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

Livingston v. Story, *9 Pet., 633;* Kirkpatrick White, *4 Wash., 595.*

37

No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

38

If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument, on the rule day when the same is filed, or on the next succeeding rule day, he shall be deemed to admit the truth and sufficiency thereof, and his bill shall be dismissed, as of course, unless a judge of the court shall allow him further time for the purpose.

ANSWERS.

39

The rule, that if a defendant submits to answer, he shall answer fully to all the matters of the bill, shall no longer apply in cases where he might by plea protect himself from such answer and discovery. And the defendant shall be entitled in all cases, by answer, to insist upon all matters of defense (not being matters of abatement or to the character of the parties, or matters of form), in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer and discover upon filing a plea in bar, and an answer in support of such plea, touching the matters set forth in the bill, to avoid or repel the bar or defense. Thus, for example, a bona fide purchaser for a valuable consideration, without notice, may set up that defense by way of answer instead of plea, and shall be entitled to the same protection, and shall not be compellable to

make any further answer, or discovery of his title, than he would be in any answer in support of such plea.

Hardeman v. Harris, *7 How., 726;* Piatt v. Oliver, *1 McLean, 295;* Mech. Bank of Alexandria v. Lynn, *1 Pet., 376;* Boone v. Chiles, *10 Pet., 179;* Brooks v. Byam, *1 Story, 296;* Kittredge v. Pres. Claremont B'k, *3 Story, 590;* Gaines v. Agnelly, *1 Woods, 238;* Samples v. The Bank, *1 Woods, 523;* Vose v. Reed, *1 Woods, 647.*

40

It shall not hereafter be necessary to interrogate a defendant specially and particularly upon any statement in the bill, unless the complainant desires to do so, to obtain a discovery.

41

The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other, and numbered consecutively 1, 2, 3, etc.; and the interrogatories which each defendant is required to answer shall be specified in a note at the foot of the bill, in the form, or to the effect following, that is to say: "The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3," etc.; and the office copy of the bill taken by each defendant shall not contain any interrogatories, except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

Amendment to 41st Equity Rule (December Term, 1871).

If the complainant, in his bill, shall waive an answer under oath, or shall only require an answer under oath with regard to certain specified interrogatories, the answer of the defendant, though under oath, except such part thereof as shall be directly responsive to such interrogatories, shall not be evidence in his favor, unless the cause be set down for hearing on bill and answer only; but may nevertheless be used as an affidavit, with the same effect as heretofore, on a motion to grant or dissolve an injunction, or on any other incidental motion in the cause; but this shall not prevent a defendant from becoming a witness in his own behalf under section 3 of the act of Congress of July 2, 1864. (*R. S., sec. 858.*)

42

The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in or addition to such note, after the bill is filed, shall be considered and treated as an amendment of the bill.

43

Instead of the words of the bill now in use, preceding the interrogating part thereof, and beginning with the words "To the end, therefore," there shall hereafter be used the words in the form, or to the effect following: "To the end, therefore,

that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as, by the note hereunder written, they are respectively required to answer; that is to say:

"1. Whether," etc.

"2. Whether," etc.

Langdon v. Goddard, *3 Story, 13.*

44

A defendant shall be at liberty, by answer, to decline answering any interrogatory or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill, from which he might have protected himself by demurrer.

Mech. B'k of Alexandria v. Lynn, *1 Pet., 376.*

45

No special replication to any answer shall be filed; but if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same with or without the payment of costs, as the court, or a judge thereof, may, in his discretion, direct.

46

In every case where an amendment shall be made after answer filed, the defendant shall put in a new or supplemental answer, on or before the next succeeding rule day after that on which the amendment or amended bill is filed, unless the time therefor is enlarged or otherwise ordered by a judge of the court; and upon his default, the like proceedings may be had as in cases of an omission to put in an answer.

PARTIES TO BILLS.

47

In all cases where it shall appear to the court that persons who might otherwise be deemed necessary or proper parties to the suit, cannot be made parties, by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may, in its discretion, proceed in the cause without making such persons parties; and, in such cases, the decree shall be without prejudice to the rights of the absent parties.

R. S., sec. 737; Louisville R. R. Co. v. Letson, *2 How., 556;* Shields v. Barrow, *17 How., 130;* Shields v. Barrow, *17 How., 141;* Herndon v. Ridgway, *17 How., 425;* Connor v. Millandon, *19 How., 113;* Taylor v. Cook, *2 McLean, 516;* Bargh v. Page, *4 McLean, 11;* Doremus v. Bennett, *4 McLean, 224;* Bank of Vicksburg v. Slocomb, *14 Pet., 60.*

48

Where the parties on either side are very numerous, and can not, without manifest inconvenience and oppressive delays in the suit, be all brought before it, the court, in its discretion, may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants in the suit properly before it. But in such cases the decree shall be without prejudice to the rights and claims of all the absent parties.

49

In all suits concerning real estate, which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate or the proceeds, or the rents and profits, in the same manner, and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate, or rents and profits, parties to the suit; but the court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

50

In suits to execute the trusts of a will, it shall not be necessary to make the heir-at-law a party;

but the plaintiff shall be at liberty to make the heir-at-law a party, where he desires to have the will established against him.

51

In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court, as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

52

Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the clerk's order book, in the form, or to the effect following; that is to say: "Set down upon the defendant's objection for want of parties." And where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled, as of course, to an order for liberty to amend his bill by adding parties. But the court, if it thinks fit, shall be at liberty to dismiss the bill.

53

If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties, not having by plea or answer taken the objection, and therein specified, by name or description, the parties to whom the objection applies, the court, if it shall think fit, shall be at liberty to make a decree saving the rights of the absent parties.

NOMINAL PARTIES TO BILLS.

54

Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party, upon service of the subpœna upon him, need not appear and answer the bill, unless the plaintiff specially requires him so to do by the prayer of his bill, but he may appear and answer at his option; and if he does not appear and answer, he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer, he shall be entitled to the costs of all the proceedings against him, unless the court shall otherwise direct.

55

Whenever an injunction is asked for by the bill to stay proceedings at law, if the defendant do not enter his appearance, and plead, demur, or answer to the same within the time prescribed therefor by these rules, the plaintiff shall be entitled, as of course, upon motion, without notice, to such injunction. But special injunctions shall be grant-

able only upon due notice to the other party, by the court, in term, or by a judge thereof, in vacation, after a hearing, which may be ex parte if the adverse party does not appear at the time and place ordered. In every case where an injunction, either the common injunction or a special injunction, is awarded in vacation, it shall, unless previously dissolved by the judge granting the same, continue until the next term of the court, or until it is dissolved by some other order of the court.

BILLS OF REVIVOR AND SUPPLEMENTAL BILLS.

56

Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor, or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by the proper parties entitled to revive the same, which bill may be filed in the clerk's office at any time; and, upon suggestion of the facts, the proper process of subpœna shall, as of course, be issued by the clerk, requiring the proper representatives of the other party to appear and show cause, if any they have, why the cause should not be revived. And if no cause shall be shown at the next rule day, which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

Glenn v. Capp, *11 Gill. & J., 1;* Thorn v. Germand, *4 Johns. Ch., 363;* Requa v. Holmes, *16 N. Y., 193;* Wash. Ins. Co. v. Slee, *2 Paige, 365;* Minnesota Co. v. St. Paul Co., *2 Wall., 609;* Mayor, etc., of Springfield v. Edwards, *10 C. L. N., 51.*

57

Whenever any suit in equity shall become defective from any event happening after the filing of the bill (as, for example, by change of interest in the parties), or for any other reason, a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any judge of the court, on any rule day, upon proper cause shown, and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead, or answer thereto, on the next succeeding rule day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by a judge of the court.

Oliver's Ex'r v. Decatur, *4 Cr. C. C., 458;* Slack v. Walcott, *3 Mason, 508;* Greenleaf v. Queen, *1 Pet., 138;* Clarke v. Matthewson, *12 Pet., 164;* Winter v. Ludlow, *3 Phila., 464;* Baker v. Whiting, *1 Story, 218;* Jenkins v. Eldredge, *3 Story, 300;* Hoxie v. Carr, *1 Sum., 173.*

58

It shall not be necessary, in any bill of revivor or supplemental bill, to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

ANSWERS.

59

Every defendant may swear to his answer before any justice or judge of any court of the United States, or before any commissioner appointed by any circuit court to take testimony or depositions, or before any master in chancery appointed by any circuit court, or before any judge of any court of a State or Territory.

AMENDMENT TO ANSWERS.

60

After an answer is put in, it may be amended, as of course, in any matter of form or by filling up a blank, or correcting a date or reference to a document, or other small matter, and be re-sworn at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer. But, after replication, or such setting down for a hearing, it shall not be amended in any material matters, as by adding new facts or defenses, or qualifying or altering the original statements, except by special leave of the court, or of a judge thereof, upon motion and cause shown after due notice to the adverse party, supported, if required, by affidavit. And in every case where leave is so granted, the court, or the judge granting the same, may, in his discretion, require that the same be separately engrossed and added as a distinct

amendment to the original answer, so as to be distinguishable therefrom.

Caster v. Wood, *Bald., 289;* Foote v. Silsby, *1 Blatch., 545;* Calloway v. Dobson, *1 Brock., 119;* Wilson v. Turberville's Ex'r, *2 Cr. C. C., 27;* Suydam v. Truesdale, *6 McLean, 459;* Smith v. Babcock, *3 Sum., 583.*

EXCEPTIONS TO ANSWERS.

61

After an answer is filed on any rule day, the plaintiff shall be allowed until the next succeeding rule day to file in the clerk's office exceptions thereto for insufficiency, and no longer, unless a longer time shall be allowed for the purpose, upon cause shown to the court, or a judge thereof; and if no exception shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

Brent v. Venable, *3 Cr. C. C., 227;* The Patriotic Bank v. Bank of Washington, *5 Cr. C. C., 602;* Brooks v. Byam, *1 Story, 296.*

62

When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had by two or more of the defendants separately, costs shall not be allowed for such separate answers or other proceedings, unless a master, upon reference to him, shall certify that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

63

Where exceptions shall be filed to the answer for insufficiency, within the period prescribed by these rules, if the defendant shall not submit to the same, and file an amended answer on the next succeeding rule day, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule day thereafter, before a judge of the court, and shall enter, as of course, in the order book, an order for that purpose. And if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be deemed sufficient; *provided, however*, that the court, or any judge thereof, may, for good cause shown, enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such terms as he may deem reasonable.

Read v. Consequa, *4 Wash.*, *335;* La Vega v. Lapsley, *1 Woods*, *428*.

64

If, at the hearing, the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto on the next succeeding rule day; otherwise the plaintiff shall, as of course, be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or, at his election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the court, or of a judge thereof, upon his put-

ting in such answer, and complying with such other terms as the court or judge may direct.

65

If, upon argument, the plaintiff's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all the costs occasioned thereby, unless otherwise directed by the court, or the judge thereof, at the hearing upon the exceptions.

REPLICATION AND ISSUE.

66

Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto, on or before the next succeeding rule day thereafter; and in all cases where the general replication is filed, the cause shall be deemed to all intents and purposes at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit, or refuse, to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand dismissed, unless the court, or a judge, thereof, shall, upon motion, for cause shown, allow a replication to be filed nunc pro tunc, the plaintiff submitting, to speed the cause, and to such other terms as may be directed.

Coleman v. Martin, *6 Bl. C. C., 291;* Robinson v. Satterlee, *3 Saw., 134;* Clements v. Moore, *6 Wall., 299;* Duponti v. Mussy, *4 Wash., 128;* Jones v. Brittan, *1 Woods, 667.*

TESTIMONY, HOW TAKEN.

67

After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties, or severally, by either party, upon interrogatories filed, by the party taking out the same, in the clerk's office, ten days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission; and, if no cross-interrogatories are filed at the expiration of the time, the commission may issue ex parte. In all cases, the commissioner or commissioners shall be named by the court, or by a judge thereof. If the parties shall so agree, the testimony may be taken upon oral interrogatories by the parties or their agents, without filing any written interrogatories.

Van Hook v. Pendleton, *2 Blatch., 85;* Pierce v. Strickland, *2 Story, 292;* Blease v. Garlington, *92 U. S., 1;* Sickles v. The Gloucester Co., *3 Wall. Jr., 193.*

Amended, December Term, 1854.

That the sixty-seventh rule governing equity practice be so amended as to allow the presiding judge of any court exercising jurisdiction, either in term time or vacation, to vest in the clerk of said court general power to name commissioners to take testimony in like manner that the court or judge thereof can do by the said sixty-seventh rule.

17 How., vii.

Amended, December Term, 1861.

Either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the court, or before an examiner to be specially appointed by the court; the examiner to be furnished with a copy of the bill and answer, if any; and such examination shall take place in the presence of the parties or their agents, by their counsel or solicitors, and the witnesses shall be subject to cross-examination and re-examination, and which shall be conducted as near as may be in the mode now used in common law courts. The depositions taken upon such oral examination shall be taken down in writing by the examiner in the form of narrative, unless he determines the examination shall be by question and answer in special instances; and when completed, shall be read over to the witness and signed by him in the presence of the parties or counsel, or such of them as may attend; *provided*, if the witness shall refuse to sign the said deposition, then the examiner shall sign the same; and the examiner may, upon all examinations, state any special matters to the court as he shall think fit; and any question or questions which may be objected to shall be noted by the examiner upon the deposition; but he shall not have power to decide on the competency, materiality, or relevancy of the questions; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

In case of refusal of witnesses to attend, to be sworn, or to answer any question put by the examiner, or by counsel or solicitor, the same practice shall be adopted as is now practiced with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.

Notice shall be given by the respective counsel, or solicitors, to the opposite counsel, or solicitors, or parties, of the time and place of the examination, for such reasonable time as the examiner may fix by order in each cause.

When the examination of witnesses before the examiner is concluded, the original deposition, authenticated by the signature of the examiner, shall be transmitted by him to the clerk of the court, to be there filed of record, in the same mode as prescribed in the 30th section of act of Congress, September 24th, 1789. (*R. S., sec. 865.*)

Testimony may be taken on commission in the usual way by written interrogatories and cross-interrogatories, on motion to the court in term time, or to a judge in vacation, for special reasons satisfactory to the court or judge.

Gen. Rules, *1 Black, 6.*

Amended, December Term, 1869.

Where the evidence to be adduced in a cause is to be taken orally, as provided in the order passed at the December term, 1861, amending the 67th general rule, the court may, on motion of either party, assign a time within which the complainant shall take his evidence in support of the bill, and a time thereafter within which the defendant shall

take his evidence in defense, and a time thereafter within which the complainant shall take his evidence in reply; and no further evidence shall be taken in the cause unless by agreement of the parties, or by leave of court first obtained on motion for cause shown.

9 Wall., vii.

68

Testimony may also be taken in the cause after it is at issue, by deposition, according to the acts of Congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon motion and affidavit of the fact, be entitled to a cross-examination of the witness, either under a commission, or by a new deposition taken under the acts of Congress, if a court, or a judge thereof, shall, under all the circumstances, deem it reasonable.

Phettiplace v. Sayles, *4 Mason, 312;* Gass v. Stinson, *3 Sum., 98;* Russell v. McLellan, *3 W. & M., 157.*

69

Three months and no more shall be allowed for the taking of testimony after the cause is at issue, unless the court, or judge thereof, shall, upon special cause shown by either party, enlarge the time; and no testimony taken after such period shall be allowed to be read in evidence at the hearing. Immediately upon the return of the commissions and depositions containing the testimony, into the clerk's office, publication thereof may be ordered in the clerk's office, by any judge of the court, upon due notice to the parties, or it may be enlarged, as he

may deem reasonable under all the circumstances. But by consent of the parties, publication of the testimony may, at any time, pass in the clerk's office, such consent being in writing, and a copy thereof entered in the order book, or indorsed upon the deposition or testimony.

Brown v. Hall, *6 Bl. C. C.*, *401;* Patten v. Darling, *1 Cliff.*, *254;* Mellus v. Howard, *2 Curt.*, *264;* Ingle v. Jones, *9 Wall.*, *486;* Wood v. Mann, *2 Sum.*, *316.*

TESTIMONY, DE BENE ESSE.

70

After any bill filed, and before the defendant hath answered the same, upon affidavit made that any of the plaintiff's witnesses are aged and infirm, or going out of the country, or that any of them is a single witness to a material fact, the clerk of the court shall, as of course, upon the application of the plaintiff, issue a commission to such commissioner or commissioners as a judge of the court may direct, to take the examination of such witness or witnesses de bene esse, upon giving due notice to the adverse party of the time and place of taking his testimony.

Eslava v. Mazange, *1 Wood.*, *623.*

FORM OF LAST INTERROGATORY.

71

The last interrogatory in the written interrogatories to take testimony, now commonly in use, shall,

in the future, be altered and stated in substance, thus: "Do you know, or can you set forth, any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? if yea, set forth the same fully and at large in your answer."

CROSS BILL.

72

Where a defendant in equity files a cross bill for discovery only, against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto, before the original plaintiff shall be compellable to answer the cross bill. The answer of the original plaintiff to such cross bill may be read and used by the party filing the cross bill at the hearing, in the same manner, and under the same restrictions as the answer, praying relief, may now be used and read.

Allen v. Allen, *Hemp., 58;* Shields v. Barrow, *17 How., 130;* Cross v. De Valle, *1 Wall., 1;* Bronson v. LaC. & M. R. R. Co., *2 Wall., 283.*

REFERENCE TO AND PROCEEDINGS BEFORE MASTERS.

73

Every decree for an account of the personal estate of a testator, or intestate, shall contain a di-

rection to the master, to whom it is referred to take the same, to inquire and state to the court what parts, if any, of such personal estate are outstanding or undisposed of, unless the court shall otherwise direct.

74

Whenever any reference of any matter is made to a master to examine and report thereon, the party at whose instance or for whose benefit the reference is made, shall cause the same to be presented to the master, for a hearing, on or before the next rule day succeeding the time when the reference was made; if he shall omit to do so, the adverse party shall be at liberty, forthwith, to cause proceedings to be had before the master, at the costs of the party procuring the reference.

75

Upon every such reference, it shall be the duty of the master, as soon as he reasonably can, after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed ex parte, or, in his discretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party, or his solicitor, of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay; and either party shall be at liberty to apply to the court, or a judge

thereof, for an order to the master to speed the proceedings, and to make his report, and to certify to the court or judge the reasons for any delay.

Coates v. Muse, *1 Brock., 530.*

76

In the reports made by the master to the court, no part of any state of facts, charge, affidavit, deposition, examination, or answer, brought in or used before them, shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination or answer, shall be identified, specified and referred to, so as to inform the court what state of facts, charge, affidavit, deposition, examination, or answer, was so brought in or used.

77

The master shall regulate all the proceedings in every hearing before him, upon every such reference; and he shall have full authority to examine the parties in the cause upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents, applicable thereto; and also to examine, on oath, viva voce, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate, from the clerk's office, or by deposition, according to the acts of Congress, or otherwise, as hereinafter provided; and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other

acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof, and the rights of the parties.

Robbins v. Davis, *1 Bl. C. C.*, *238;* Jenkins v. Greenwald, *1 Bond, 126;* Jenkins v. Greenwald, *1 Bond, 133;* Russell v. McLennan, *3 W. & M., 157.*

78

Witnesses who live within the district, may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpœna in the usual form, which may be issued by the clerk in blank, and filled up by the party praying the same, or by the commissioner, master or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court; and if any witness shall refuse to appear, or to give evidence, it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon, by order of the court, or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the court. But nothing herein contained shall prevent the examination of witnesses viva voce, when produced in open court, if the court shall, in its discretion, deem it advisable.

Rule 67.

79

All parties accounting before a master, shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties, who shall not be satisfied with the accounts so brought in, shall be at liberty to examine the accounting party viva voce, or upon interrogatories, in the master's office, or by deposition, as the master shall direct.

Ransom v. Winn, *18 How.*, *295*.

80

All affidavits, depositions, and documents, which have been previously made, read, or used in the court, upon any proceeding in any cause or matter, may be used before the master.

81

The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories, or viva voce, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examination shall be taken down by the master, or by some other person by his order, and in his presence, if either party requires it, in order that the same may be used by the court, if necessary.

82

The circuit courts may appoint standing masters in chancery in their respective districts, both the judges concurring in the appointment; and they may also appoint a master pro hac vice in any par-

ticular case. The compensation to be allowed to every master in chancery for his services, in any particular case, shall be fixed by the circuit court, in its discretion, having regard to all the circumstances thereof; and the compensation shall be charged upon and borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation; but when the compensation is allowed by the court, he shall be entitled to an attachment for the amount against the party, who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.

EXCEPTIONS TO MASTER'S REPORT.

83

The master as soon as his report is ready, shall return the same into the clerk's office, and the day of the return shall be entered by the clerk in the order book. The parties shall have one month from the time of filing the report, to file exceptions thereto; and if no exceptions are within that period filed by either party, the report shall stand confirmed on the next rule day after the month is expired. If exceptions are filed, they shall stand for hearing before the court, if the court is then in session, or if not, then at the next sitting of the court which shall be held thereafter by adjournment or otherwise.

Troy Iron and Nail Fact. v. Corning, *6 Bl. C. C., 328;* Greene v. Bishop, *1 Cliff., 186;* Brockett v. Brockett, *3 How., 691;* Ward v. Peck, *18 How.*,

289; McMicken v. Perin, *18 How.*, *507;* Story v. Livingston, *13 Pet.*, *359;* Dexter v. Arnold, *2 2 Sum.*, *108;* Gordon v. Lewis, *2 Sum.*, *143;* Canal Co. v. Gordon, *6 Wall.*, *561;* Harding v. Handy, *11 Wheat.*, *103;* Gaines v. New Orleans, *1 Woods*, *104;* Stanton v. Al. & Chat. R. R. Co., *2 Woods*, *506;* Mason v. Crosby, *3 W. & M.*, *258.*

84

And in order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall for every exception overruled pay costs to the other party, and for every exception allowed shall be entitled to costs—the costs to be fixed in each case by the court, by a standing rule of the circuit court.

DECREES.

85

Clerical mistakes in decrees, or decretal orders, or errors arising from any accidental slip or omission, may at any time, before an actual enrollment thereof, be corrected by order of the court or a judge thereof, upon petition, without the form or expense of a re-hearing.

86

In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin in substance as follow: "This cause came on

to be heard (or to be further heard, as the case may be), at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered adjudged, and decreed as follows, viz: [Here insert the decree or order.]

87

GUARDIANS AND PROCHEIN AMIS.

Guardians ad litem to defend a suit may be appointed by the court, or by any judge thereof, for infants, or other persons who are under guardianship, or otherwise incapable to sue for themselves. All infants, and other persons so incapable, may sue by their guardians, if any, or by their prochein ami, subject, however, to such orders as the court may direct for the protection of infants and other persons.

88

Every petition for a re-hearing shall contain the special matter or cause on which such re-hearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party, or by some other person. No re-hearing shall be granted after the term, at which the final decree of the court shall have been entered and recorded, if an appeal lies to the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court.

Clarke v. Threlkeld, *2 Cr. C. C., 408;* Daniel v. Mitchell, *1 Story, 198;* Jenkins v. Eldredge, *3 Story, 299;* Emerson v. Davies, *1 W. & M., 21;* Browder v. McArthur, *7 Wheat., 58;* Hunter v.

Town of Marlboro, *2 W. & M., 169;* Bentley v. Phelps, *3 W. & M., 403;* Tufts v. Tufts, *3 W. & M., 426;* Roemer v. Simon, *91 U. S., 149.*

89

The circuit courts (both judges concurring therein) may make any other and further rules and regulations for the practice, proceedings, and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

U. S. Bank v. White, *8 Pet., 262.*

90

In all cases where the rules prescribed by this court or by the circuit court do not apply, the practice of the circuit court shall be regulated by the present practice of the high court of chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local convenience of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

Van Hook v. Pendleton, *2 Bl. C. C., 85;* Hubbard v. Turner, *2 McLean, 519;* Pomeroy v. Manin, *2 Paine, 476;* Vattier v. Hinde, *7 Pet., 253;* Livingston v. Story, *9 Pet., 632;* Rhode Island v. Massachusetts, *14 Pet., 210;* Smith v. Burnham, *2 Sum., 612.*

91

Whenever, under these rules, an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu

thereof, make solemn affirmation to the truth of the facts stated by him.

92

DECEMBER TERM, 1863.

In suits in equity for the foreclosure of mortgages in the circuit courts of the United States, or in any court of the Territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in the eighth rule of this court, regulating the equity practice, where the decree is solely for the payment of money.

1 Wall., v.

RULES OF THE CIRCUIT COURTS IN EQUITY.

1

SERVICE OF COPIES.

If the defendant appears, the complainant shall serve him with a copy of the bill, if required, within twenty days after receiving notice of such appearance; and after such appearance, the party filing any pleading or proceeding in the cause, whether plaintiff or defendant, shall, at the time of filing the same, serve a copy thereof on the opposite party, or his attorney.

2

SECURITY FOR COSTS.

The clerk shall require of all non-residents of this district an indorser for costs. The following form upon the writ or bill may substantially be pursued: "I (A. B.), acknowledge myself security for all costs for which the ——— may be liable in this suit." The remedy for the enforcement of payment of any costs for which any party may become liable shall be as provided in Law Rule No. 4 of this court.

3

ADMINISTRATION OF OATHS.

Jurats and affidavits to be used in this court may be verified before the clerk of any court of record, or before any notary public; *provided, however*, that where such clerk or notary is a non-resident of this district, his signature shall be attested by his official seal.

Gen. Eq. Rules, 59, 91.

4

FRAME OF BILLS AND ANSWERS.

Every bill of complaint shall contain, as concisely as may be, a narrative of the material facts, matters and circumstances on which the complainant relies, such narrative being divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate and distinct matter or allegation, and shall pray specifically for the relief which the complainant may conceive himself entitled to, and also for general relief; and the prayer shall be subdivided into paragraphs numbered consecutively, each praying separate relief, following as nearly as may be, the form set forth by the English General Order No. 14, *Daniel. Ch. Prac., page 319.* Every answer shall contain not only the defendant's answer to the several paragraphs of the bill, but, thereafter, such statement of his case as he may deem it necessary or advisable to make; and such answer shall also be divided into paragraphs, numbered consecutively, each paragraph containing, as nearly as may be, a separate and distinct allega-

tion; and such answer must be full and explicit and distinct to each separate paragraph in the bill, in the same order as numbered in the bill, before it enters upon any statement of the defendant's case; and the common commencing clauses, reserving exceptions, and containing protestations, and the common concluding clause, denying combination, and the general traverse, and the common repetitions, "This defendant further answering, saith," and the like shall be omitted.

Gen. Eq. Rules, 20, 21, 22, 23, 24, 26, 41, 42, 43, 89, 93, 44, 59.

5

FORECLOSURE BILLS.

In a bill for foreclosure or satisfaction of a mortgage, it shall not be necessary or allowable to set out at length the rights and interests of the several defendants who are purchasers of, or who have liens on, the equity of redemption in the mortgaged premises, subsequent to the registry or recording of the complainant's mortgage, and who claim no right in opposition thereto; but it shall be sufficient for the complainant, after setting out his own right and interest in the premises, to state generally that such defendants have, or claim, some interest in the premises, as subsequent purchasers or incumbrancers, or otherwise; and if any such defendants are, by the misstatements of the complainant in his bill, or otherwise, unnecessarily compelled to put in an answer to protect their rights, the costs occasioned thereby may, in the discretion of the court, be charged on the complainant personally; and if such defendants unnecessarily

put in answer to such bill, the extra costs occasioned by such answer may be charged on the defendants personally, in the discretion of the court.

6

CREDITORS' BILLS.

When a creditor by judgment, or decree, files a bill in this court against his debtor to obtain satisfaction out of the equitable interests, things in action, or other property of the latter, after the return of an execution unsatisfied, he shall state in such bill the true sum actually and equitably due on such judgment or decree, over and above all just claims of defendant by way of set-off, or otherwise. The bill shall likewise contain an allegation that the same is not exhibited by collusion with the defendant, or for the purpose of protecting the property or effects of the debtor, against the claims of other creditors, but for the sole purpose of compelling payment and satisfaction of complainant's own debt.

7

VERIFICATION OF CREDITORS' BILL.

Every such creditor's bill shall be verified by the oath of the complainant, or of his agent or attorney: or the material allegations in the bill as to the recovery of the judgment or decree, the return of execution unsatisfied, the amount justly due thereon, and that the bill is not exhibited by collusion with the defendant, but for the sole purpose of compelling payment and satisfaction of the complainant's own debt, shall be established by affidavit. The charging part of the bill shall not be

considered as sworn to unless it is expressly so stated in the jurat.

Gen. Eq. Rule 95.

8

RECEIVERS IN CREDITORS' SUITS.

Every receiver of the property and effects of the debtor, appointed in a suit upon a creditor's bill, shall, unless restricted by the special order of the court, have general power and authority to sue for and collect all the debts, demands and rents belonging to such debtor, and to compromise and settle such as are unsafe and of a doubtful character. He may also sue in the name of the debtor where it is necessary or proper for him to do so, and he may apply for and obtain an order of course that the tenants of any real estate belonging to the debtor, or of which he is entitled to the rents or profits, attorn to such receiver and pay their rents to him. He shall also be permitted to make leases from time to time, as may be necessary, for terms not exceeding one year. And it shall be his duty, without any unreasonable delay, to convert all the personal estate and effects into money; but he shall not sell any real estate of the debtor, without the special order of the court. He is not to be allowed for the costs of any suit brought by him against an insolvent from whom he is unable to collect his costs, unless such suit is brought by order of the court, or by the consent of all persons interested in the funds in his hands. But he may sell such desperate debts, and all other doubtful claims to personal property, at public auction, giving at least

ten days' notice of the time and place of such sale.

De Visser v. Blackstone, *6 Bl. C. C., 235.*

9

DUTIES OF RECEIVERS.

Where several bills are filed by different creditors against the same debtor, no more than one receiver of his property and effects shall be appointed, unless the first appointment has been obtained by fraud or collusion, or unless the receiver is an improper person to execute the trust. The receiver shall give security sufficient to cover the whole property and effects of the debtor which may come in his hands by virtue of his office; and he shall hold such property and effects for the benefit of all creditors who have commenced, or shall commence, similar suits during the continuance of his trust, to be disposed of according to their legal or equitable priorities. He shall not pay over the funds in his hands to the parties, or to any other person, without being specially authorized to do so by an order or decree by the court; nor shall he be discharged from his trust without a special order, to be obtained upon a written consent by all the parties interested in the property in his hands, or upon due notice of the application.

10

INJUNCTION UPON CREDITORS' BILLS.

No injunction issued upon any such creditor's bill shall be construed to prevent the debtor from receiving and applying the proceeds of his subsequent earnings to the support of himself or of his

family, or to defray the expenses of the suit, or to prevent him from complying with any order of this court, made in any other cause, to assign and deliver his property and effects to a receiver; or to restrain him from making the necessary assignment to obtain his discharge under the insolvent laws, unless an express provision to that effect is contained in the injunction.

11

ORDER FOR RECEIVERS

An injunction may be allowed and a receiver appointed in any stage of the cause, either on stipulation or on motion. The court may appoint such receiver, or may make an order referring it to a master to appoint a receiver with the usual powers, and to take from him the requisite security. The order shall also direct the defendant to assign, transfer, convey, and deliver over to the receiver, on oath, under the direction of the master, all his property, equitable interests, things in action, and effects, and all notes, bonds, mortgages, deeds, books of accounts, contracts, papers, evidences, and securities relating to the same; and that he appear before the master from time to time, and produce such books and papers, and submit to such examination, on oath, as the master shall direct, in relation to any matter which he might be legally required to disclose. The complainant shall also be at liberty to examine witnesses before the master as to the property of the defendant, or as to any other matter charged in the bill and not admitted by the defendant.

12

DUTIES OF MASTERS AND EXAMINERS.

That such masters and examiners in chancery as may be or have been appointed by this court, shall perform all duties which, according to law and the practice of courts of chancery, appertain to the office, in all causes depending on the equity side of this court; and they shall be entitled to such fees and charges for their services as are prescribed by the statutes of Michigan, or which may be allowed by this court. And a master or marshal making sale under an order or decree shall be entitled to commission on the proceeds thereof as follows: On the first $500, two per cent; on the next $500, one and a half per cent; and on the excess above $1,000, one per cent, not exceeding in all $50. And in case the master shall be required to make sale under any order or decree, or examine witnesses at a place distant from his residence, he shall be allowed his necessary and reasonable expenses accrued attending such sale or examining such witnesses, and a reasonable remuneration for his time, to be fixed by the court, for going to, remaining at, and returning from such place.

13

SERVICE ON NON-RESIDENT SOLICITORS.

In all cases where a solicitor of this court resides out of the city of Detroit, service of notices and other papers, may be made on him or the party by putting them into the post-office directed to the solicitor, or party at his place of residence, to be ascertained according to the best information of the person making the service.

14

WAIVER OF OATH.

The complainant may in his bill waive the necessity of defendant's answer being put in on oath, in pursuance of section 5067 of the Compiled Laws of this State, and in such case the answer shall have no greater force as evidence than the bill.

Baker v. Biddle, *Bald.*, *407;* Chace v. Holmes, *2 Gray*, *433;* Armstrong v. Scott, *3 Greene*, *433;* Patterson v. Gaines, *6 How.*, *550;* Clements v. Moore, *6 Wall.*, *314;* Bronson v. Green, *Walk. Ch.*, *486.*

15

ENROLLMENT.

No record of the bill or other pleadings or proceedings in any suit finally determined in equity shall be made. The final decree shall be drawn up by the solicitor obtaining the same, and such decree or the decretal part thereof shall be entered by the clerk on the journals of the court. A fair engrossed copy of the decree shall be prepared by the clerk. The clerk shall attach together the bill, pleadings, and other papers filed in the cause, and annex thereto such copy of the said decree, and file the same in his office, and such filing shall be deemed an enrollment of the decree and proceedings, and shall have the same effect.

16

DECREES PRO CONFESSO.

When the defendant having been served with process, as provided by the 15th rule, does not appear as required by the 17th rule, a decree pro confesso under the 18th rule may be entered against him.

17

NOTICES OF MOTIONS.

Like notice shall be given of the argument of special motions, as is required by the rules of this court, in cases of law, and such notice shall be addressed and served in the manner prescribed by these rules.

Law Rules, 2, 4.

18

NOTICES OF HEARING.

A notice of hearing of every case of issue upon pleadings and proof shall be given at least ten days before the first day of the term, and a *note* of issue of every such case shall at the same time be filed with the clerk; *provided*, that where the time for taking proofs in any case shall expire after the first day of the term, or within ten days before said first day, such case may be noticed for hearing during the term; and, after the lapse of ten days from the giving of such notice, or filing due proof of service of notice, such case shall be placed by the clerk on the chancery docket for the term, at the foot of the docket, and shall stand for hearing at any time before said docket shall have been finally called and disposed of. Issues of law may be called up at any time upon five days' notice.

19

After the report of a sale by a master in chancery is filed, either party may have an order of course to confirm the same, unless cause to the contrary thereof be shown in eight days after notice of

its being filed; and if no exceptions are filed and served within that time, the order shall become absolute of course, without further order; or either party may file exceptions, and have an order of course, to confirm the report, so far as the report is not excepted to, and with the like effect. No notice of filing the report shall be necessary in cases where the bill has been taken as confessed.

Schwartz v. Sears, *Walk. Ch'y, 19;* Ward v. Jewett, *Walk. Ch., 45;* Suydam v. Dequindre, *Walk. Ch., 23.*

20

GENERAL RULE FOR THE HEARING AND ARGUMENT OF CASES.

Preparatory to the argument of a case other than in jury trials, counsel for the respective parties are required to furnish to the court, printed, or plainly written, and in the order following:

1. The legal questions of the case.
2. The nature of the case, briefly stated.
3. The relevant and material facts, in numbered paragraphs, together with the points made, and the authorities cited in support of them arranged under the respective points.
4. Abstracts of pleadings and proofs, so far as material and relevant, preserving the numbering of the paragraphs of the pleadings, and folioing the proofs.

It will greatly facilitate the argument of the legal propositions of a case if counsel, before citing authorities, will first state legal propositions insisted upon; then give the authority; next state the point decided in the cited case, and then the facts

upon which the ruling is based. Finally, read only the language of the court in deciding the point; when more is desired the court will indicate it.

Abstracts of the material testimony generally give all that is necessary to an understanding of the case upon the facts. The original testimony can be read from when essential to a proper understanding of it, or where the accuracy of the abstract is questioned.

GENERAL ADMIRALTY RULES

PRESCRIBED BY THE SUPREME COURT.

DECEMBER TERM, 1844.

1

MESNE PROCESS.

No mesne process shall issue from the district court, in any civil cause of admiralty and maritime jurisdiction, until the libel or libel of information shall be filed in the clerk's office from which such process is to issue. All process shall be served by the marshal, or by his deputy; or, where he or they are interested, by some discreet and disinterested person appointed by the court.

U. S. v. Schooner Little Charles, *1 Brock., 382.*

2

IN SUITS IN PERSONAM.

In suits *in personam*, the mesne process may be by a simple warrant of arrest of the person of the defendant, in the nature of a capias; or by a warrant of arrest of the person of the defendant, with a clause therein, that if he cannot be found, to attach his goods and chattels to the amount sued for, or, if such property cannot be found, to attach his credits and effects to the amount sued for in the

hands of the garnishees named therein; or, by a simple monition in the nature of a summons to appear and answer to the suit, as the libellant shall, in his libel or information, pray for or elect.

Rules 7 and 48; Dist. Ct. Rule 2; Bouysson v. Miller, *Bee, 136;* Atkins v. Fibre Disintegrating Co., *1 Ben., 118;* Reed v. Hussy, *1 Bl. & H., 525;* The Invincible, *2 Gall., 29;* Wilson v. Pierce, *15 Law Rep., 137;* Clarke v. Navigation Co., *1 St., 531;* Manro v. Almeida, *10 Wheat., 473.*

3

BAIL ON ARREST.

In all suits *in personam*, where a simple warrant of arrest issues and is executed, the marshal may take bail, with sufficient sureties, from the party arrested, by bond or stipulation, upon condition that he will appear in the suit, and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered there in the court to which the process is returnable, or in any appellate court; and upon such bond or stipulation, summary process of execution may and shall be issued against the principal and sureties, by the court to which such process is returnable, to enforce the final decree so rendered, or upon appeal, by the appellate court.

Matter of Farrand, *1 Ab. U. S., 141;* Matter of Snow's Bail, *2 Curt., 485;* The Octavia, *1 Mason, 149.*

4

DISSOLUTION OF ATTACHMENTS.

In all suits *in personam*, where goods and chattels, or credits and effects are attached under such

warrant authorizing the same, the attachment may be dissolved by order of the court to which the same warrant is returnable, upon the defendant, whose property is so attached, giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the court, and to pay the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court; and upon such bond or stipulation, summary process of execution shall and may be issued against the principal and sureties, by the court to which such warrant is returnable, to enforce the final decree so rendered, or upon appeal, by the appellate court.

5

STIPULATIONS—BEFORE WHOM TAKEN.

Bonds or stipulations in admiralty suits may be given and taken in open court, or at chambers, or before any commmissioner of the court who is authorized by the court to take affidavits of bail and depositions, in cases pending before the court, or any commissioner of the United States authorized by law to take bail and affidavits in civil cases.

Rule 35; 13 Wall., xiv.

6

REDUCTION OF BAIL—NEW SURETIES.

In all suits *in personam*, where bail is taken, the court may, upon motion, for due cause shown, reduce the amount of the sum contained in the bond or stipulation therefor; and in all cases where a bond or stipulation is taken as bail, or upon dis-

solving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the court to be given upon motion and due proof thereof.

The Old Concord, *1 Brown, 270;* The Thales, *10 Blatch, 203;* The Virgo, *13 Blatch., 255;* Hale v. Johnson, *80 Ill., 185.*

7

ORDERS OF ARREST.

In suits *in personam,* no warrant of arrest, either of the person or property of the defendant, shall issue for a sum exceeding five hundred dollars, unless by the special order of the court, upon affidavit, or other proper proof, showing the propriety thereof.

8

MONITIONS TO THIRD PERSONS.

In all suits *in rem,* against a ship, her tackle, sails, apparel, furniture, boats or other appurtenances, if such tackle, sails, apparel, furniture, boats or other appurtenances are in the possession or custody of any third person, the court may, after a due monition to such third person, and a hearing of the cause, if any, why the same should not be delivered over, award and decree that the same be delivered into the custody of the marshal or other proper officer, if, upon the hearing, the same is required by law and justice.

The Prescott, *1 Ben., 1;* The Harmonie, *1 Wm. Rob., 179.*

9

PROCESS IN REM.

In all cases of seizure, and in other suits and proceedings *in rem*, the process, unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods or other thing to be arrested; and the marshal shall thereupon arrest and take the ship, goods or other thing into his possession for safe custody; and shall cause public notice thereof, and of the time assigned for the return of such process and the hearing of the cause, to be given in such newspaper within the district as the district court shall order; and if there is no newspaper published therein, then in such other public places in the district as the court shall direct.

Burke v. Trevitt, *1 Mason, 96;* The Hibernia, *1 Spr., 78;* The Julia Ann, *1 Spr., 382; 7 Law Rep., 135.*

10

INTERLOCUTORY SALES.

In all cases where any goods or other things are arrested, if the same are perishable, or are liable to deterioration, decay or injury, by being detained in custody pending the suit, the court may, upon the application of either party, in its discretion, order the same or so much thereof to be sold as shall be perishable, or liable to depreciation, decay or injury, and the proceeds, or so much thereof as shall be a full security to satisfy in decree, to be brought into court, to abide the event of the suit; or the court may, upon the application of the claimant, order a delivery thereof to him upon a

due appraisement to be had under its direction, either upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation with the sureties in such sum as the court shall direct, to abide by and pay the money awarded by the final decree rendered by the court, or the appellate court, if any appeal intervenes, as the one or the other course shall be ordered by the court.

The Cargo ex Venus, *L. R. 1 Ad.*, *50.*

11

BONDING AND SALE OF VESSELS.

In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him upon a due appraisement to be had under the direction of the court, upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation with sureties as aforesaid; and if the claimant shall decline any such application, then the court may, in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into court, or otherwise disposed of, as it may deem most for the benefit of all concerned.

Gaines v. Travis, *Ab. Adm'y*, *297;* Cure v. Bullus, *1 Ab.*, *555;* Treat v. The Rainbow, *1 Ben.*, *40;* Place v. The City of Norwich, *1 Ben.*, *90;* The Brig Antelope, *1 Ben.*, *343;* The Antelope, *1 Ben.*, *522;* The Thales, *3 Ben.*, *327;* Bark Vivid, *3 Ben.*, *397;* U. S. v. Distilled Spirits, *4 Ben.*, *349;* The Belle, *5 Ben.*, *57;* Freight Money of the Monadnock, *5 Ben.*, *357;* The Union, *4 Blatch.*, *90;* The White Squall, *4 Blatch.*, *103;* Brig Alli-

gator, *1 Gall., 145;* Schooner America, *1 Gall., 230;* Ex parte Robbins, *2 Gall., 320;* U. S. v. Four Pieces of Woolen Cloth, *1 Paine, 435;* The Ship Nathaniel Hooper, *3 Sumn., 544;* Poland v. Freight of Brig Spartan, *Ware, 134;* Lane v. Townsend, *Ware, 286;* The Palmyra, *12 Wheat., 1;* The Kalamazoo, *9 E. L. & Eq., 557;* The Wild Ranger, *B. & L., 84; 15 Law Rep., 563;* Senab v. Steamer Josephine, *4 Cent. Law Jour., 262;* The Old Concord, *1 Brown, 270.*

12

SUITS BY MATERIAL MEN.

In all suits by material men for supplies or repairs or other necessaries, the libellant may proceed against the ship and freight *in rem*, or against the master or the owner alone *in personam.*

The Brig Eledona, *2 Ben., 31;* The Kate Tremaine, *5 Ben., 64;* The Selt, *3 Biss., 344;* Francis v. Barque Harrison, *1 Saw., 353;* Rules, *21 How.*, iv; *13 Wall.*, xiv.

13

BY MARINERS.

In all suits for mariners' wages, the libellant may proceed against the ship, freight and master, or against the ship and freight, or against the owner or master alone *in personam.*

The Merchant, *1 Abb., 1;* Borden v. Hiern, *1 Bl. & How., 293;* Ward v. Ogdensburgh, *5 McL., 622;* Woolman v. Prop. Richard Doane, *7 Int. Rev., Rec. 77.*

14

FOR PILOTAGE.

In all suits for pilotage, the libellant may proceed against the ship and master, or against the ship, or against the owner alone or the master alone *in personam.*

Banta v. McNeil, *5 Ben., 74;* The Oriflamm *1 Saw., 177;* The California, *1 Saw., 463;* E parte McNeil, *13 Wall., 236.*

15

FOR COLLISION.

In all suits for damage by collision, the libellant may proceed against the ship and master, or against the ship alone, against the master or the owner alone *in personam.*

The Richard Doane, *2 Ben., 111;* The Young America, *1 Brown, 462;* The Atlantic and Ogdensburgh, *1 Newb., 139;* Matern v. Gibbs, *1 Spr., 158.*

16

FOR PERSONAL TORTS.

In all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be *personam* only.

Borden v. Hiern, *Bl. & How., 293;* Pettingill v. Dinsmore, *Daveis, 208;* Knowlton v. Boss, *1 Spr., 163;* The Sarah Ann, *2 Sum., 206;* Pratt v. Thomas, *Ware, 427;* Roberts v. Skolfield, *3 Ware, 184.*

17

UPON MARITIME HYPOTHECATION.

In all suits against the ship or freight, founded upon a mere maritime hypothecation, either express or implied, of the master, for moneys taken up in a foreign port for supplies or repairs or other necessaries for the voyage, without any claim of marine interest, the libellant may proceed either *in rem,* or against the master or the owner alone *in personam.*

18

UPON BOTTOMRY BONDS.

In all suits on bottomry bonds, properly so called, the suit shall be *in rem* only against the property hypothecated, or the proceeds of the property in whosesoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property; or, unless the owner has, by his own misconduct or wrong, lost or subtracted the property; in which latter cases, the suit may be *in personam* against the wrong-doer.

Burke v. M. P. Rich, *1 Cliff., 303.*

19

FOR SALVAGE.

In all suits for salvage, the suit may be *in rem* against the property saved, or the proceeds thereof; or *in personam* against the party at whose request, and for whose benefit the salvage service has been performed.

Miller v. Kelly, *1 Ab., 564;* The Charles Henry, *1 Ben., 8;* Bondies v. Sherwood, *22 How., 214;* The Schooner Boston, *1 Sum., 328;* The Henry Ewbank, *1 Sum., 400;* Nott v. Steamboat Sabine, *2 Woods, 211;* Huber v. Seven Coal Barges, *2 C. L. N., 277.*

20

PETITORY AND POSSESSORY SUITS.

In all petitory or possessory suits between part-owners or adverse proprietors, or by the owners of a ship or the majority thereof against the master

of a ship, for the ascertainment of the title and delivery of the possession, or for the possession only; or by one or more part-owners against the others, to obtain security for the return of the ship from any voyage undertaken without their consent; or by one or more part-owners against the others, to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process shall be by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit.

The Friendship, *2 Curt., 426;* Ward v. Peck, *18 How., 267;* The Schooner Tilton, *5 Mason, 465;* The Prop. S. C. Ives, *1 Newb., 205;* The Taranto, *1 Spr., 170.*

21

FINAL PROCESS.

In all cases of a final decree for the payment of money, the libellant shall have a writ of execution in the nature of *fieri facias*, commanding the marshal, or his deputy, to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate of the defendant or stipulators.

Rules, *1 Black, 6.*

22

LIBELS OF INFORMATION.

All informations and libels of information upon seizures for any breach of the revenue or navigation or other laws of the United States, shall state the place of seizure, whether it be on land or on the high seas, or on navigable waters within the

admiralty and maritime jurisdiction of the United States; and the district within which the property is brought, and where it then is. The information, or libel of information, shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the form of the statute or statutes of the United States, in such case provided, as the case may require; and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause, at the return day of the process, why the forfeiture should not be decreed.

U. S. v. The Schooner Little Charles, *1 Brock., 347;* The Caroline, *1 Brock., 384;* Locke v. U. S., *7 Cr., 339;* Schooner Hoppet v. U. S., *7 Cr., 339;* Brig Caroline v. U. S., *7 Cr., 496;* Schooner Anne v. U. S., *7 Cr., 570;* U. S. v. The Brig Neurea, *19 How., 92;* The Fidcliter v. U. S., *1 Saw., 153;* The Samuel, *1 Wheat., 9;* The Mary Ann, *8 Wheat., 380;* The Emily, *9 Wheat., 381;* The Merino, *9 Wheat., 391;* The Margaret, *9 Wheat., 421;* Two Hundred Chests of Tea, *9 Wheat., 430;* The Palmyra, *12 Wheat., 12;* The Washington, *17 Law Rep., 497;* U. S. v. Steamer Missouri, *3 Ben., 508; 4 Ben., 410; 9 Blatch., 433.*

23

FORM OF LIBELS.

All libels in instance causes, civil or maritime, shall state the nature of the cause, as for example, that it is a cause civil and maritime, of contract, or of tort or damage, or of salvage, or of possession, or otherwise, as the case may be; and if the libel be *in rem*, that the property is within the district;

and if *in personam*, the names and occupations and places of residence of the parties. The libel shall also propound and articulate in distinct articles the various allegations of facts upon which the libellant relies in support of his suit, so that the defendant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer of due process to enforce his rights *in rem* or *in personam* (as the case may require), and for such relief and redress as the court is competent to give in the premises. And the libellant may further require the defendant to answer, on oath, all interrogatories propounded by him, touching all and singular the allegations in the libel, at the close or conclusion thereof.

The H. P. Baldwin, *2 Abb. U. S.*, *257;* Quinn v. The Transport, *1 Ben.*, *86;* The Havre, *1 Ben.*, *295;* The Alabama, etc., *1 Ben.*, *476;* The Coleman and Foster, *1 Brown*, *456;* Livingston v. Dorgenois, *7 Cr.*, *577;* The Clement, *2 Curt.*, *363;* Pettingill v. Dinsmore, *Davis*, *208;* Dupont de Nemours v. Vance, *19 How.*, *162;* West v. The Uncle Sam, *1 McAl.*, *595;* The Aldebaran, *Olcott*, *130;* Robinson v. Hinckley, *2 Paine*, *457*, Treadwell v. Joseph, *1 Sum.*, *390;* Wilson v. Graham, *4 Wash. C. C.*, *54;* Commander-in-Chief, *1 Wall.*, *43;* Jenks v. Lewis, *Ware*, *51;* Pratt v. Thomas, *Ware*, *427;* *7 Law Rep.*, *135;* *7 Wash. C. C.*, *434;* The Virgil, *2 Wm. Rob.*, *204;* The Ebenezer, *2 Wm. Rob.*, *209*.

24

AMENDMENTS OF LIBELS.

In all informations and libels in causes of admiralty and maritime jurisdiction, amendments in

matters of form may be made at any time, on motion to the court as of course; and new counts may be filed, and amendments in matters of substance may be made, upon motion, at any time before the final decree, upon such terms as the court shall impose; and where any defect of form is set down by the defendant upon special exceptions, and is allowed, the court may, in granting leave to amend, impose terms upon the libellant.

Davis v. Leslie, *1 Abb., 123;* The Circassian, *2 Ben., 171;* The Deer, *4 Ben., 352;* Am. Ins. Co. v. Johnson, *Bl. & How., 9;* The Anne v. U. S., *7 Cr., 570;* Nevitt v. Clarke, *Olcott, 316;* The S. C. Ives, *1 Newb., 205;* Agnew v. Dorman, *Taney, 386;* Taylor v. Harwood, *Taney, 437;* Reppert v. Robinson, *Taney, 492;* Newell v. Norton, *3 Wall., 257;* The Edward, *1 Wheat., 261;* The Mary Ann, *8 Wheat., 380;* The Marianna Flora, *11 Wheat., 2.*

25

STIPULATIONS IN PERSONAM.

In all cases of libels *in personam*, the court may, in its discretion, upon the appearance of the defendant, where no bail has been taken and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation with sureties in such sum as the court shall direct, to pay all costs and expenses which shall be awarded against him in the suit upon the final adjudication thereof, or by any interlocutory order in the progress of the suit.

Gardner v. Isaacson, *Abb. Adm'y, 141.*

26

CLAIMS TO BE VERIFIED.

In suits *in rem*, the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant, by whom or on whose behalf the claim is made, is the true and *bona fide* owner, and that no other person is the owner thereof. And where the claim is put in by an agent or consignee, he shall also make oath that he is duly authorized thereto by the owner; or, if the property be, at the time of the arrest, in the possession of the master of a ship, that he is the lawful bailee thereof for the owner; and upon putting in such claim, the claimant shall file a stipulation with sureties in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or, upon an appeal, by the appellate court.

The Jenny Lind, *3 Blatch., 513;* The Ann C. Pratt, *1 Curt., 340;* The Monticello v. Mollison, *17 How,, 153;* The L. B. Goldsmith, *Newb., 123;* The Spark v. Lee Choi Chum, *1 Saw., 713;* The Mary Anne, *Ware, 104;* The Flora, *1 Hag. Adm., 298.*

27

ANSWERS TO BE VERIFIED.

In all libels in causes of civil and maritime jurisdiction, whether *in rem* or *in personam*, the answer of the defendant to the allegations in the libel shall be on oath or solemn affirmation; and the answer shall be full and explicit, and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the libel,

and shall also answer in like manner each interrogatory propounded at the close of the libel.

Rule 48; The Washington Irving, *1 Abb., 336;* The Elizabeth Frith, *Bl. & How., 195;* Hart v. The Otis, *Crubbe, 52;* Orne v. Townsend, *4 Mason, 541;* The Mutual Safety Ins. Co. v. Cargo of the George, *Olcott, 157;* The California, *1 Saw., 463;* The Boston, *1 Sum., 328;* Macomber v. Thompson, *1 Sum., 384;* Commander-in-Chief, *1 Wall., 43;* The William Harris, *Ware, 367;* U. S. v. The Sun, *10 Am. L. R., 277.*

28

EXCEPTIONS TO ANSWERS.

The libellant may except to the sufficiency or fullness or distinctness or relevancy of the answer to the articles and interrogatories in the libel; and if the court shall adjudge the same exceptions or any of them to be good and valid, the court shall order the defendant forthwith, or within such time as the court shall direct, to answer the same, and may further order the defendant to pay such costs as the court shall adjudge reasonable.

The Elizabeth Frith, *Bl. & How., 195;* The California, *1 Saw., 463;* Lamb v. Parkman, *21 Law Rep., 589.*

29

DECREES PRO CONFESSO.

If the defendant shall omit or refuse to make due answer to the libel upon the return day of the process or other day assigned by the court, the court shall pronounce him to be in contumacy and default; and thereupon the libel shall be adjudged to be taken *pro confesso* against him, and the court shall proceed to hear the cause *ex parte*, and ad-

judge therein as to law and justice shall appertain. But the court may, in its discretion, set aside the default, and, upon the application of the defendant, admit him to make answer to the libel at any time before the final hearing and decree, upon his payment of all the costs of the suit up to the time of granting leave therefor.

Rule 40; The Martha, *Bl. & How.*, *151;* Scott v. The Young America, *Newb.*, *107;* The Monarch, *1 Wm. Rob.*, *21.*

30

PROCEEDINGS ON EXCEPTIONS.

In all cases where the defendant answers, but does not answer fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the court may, by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken *pro confesso* against the defendant to the full purport and effect of the article to which it purports to answer, and as if no answer had been put in thereto.

31

INCRIMINATING INTERROGATORIES.

The defendant may object, by his answer, to answer any allegation or interrogatory contained in the libel, which will expose him to any prosecution or punishment for a crime, or for any penalty or any forfeiture of his property for any penal offense.

32

ANSWERS TO INTERROGATORIES.

The defendant shall have a right to require the personal answer of the libellant, upon oath or solemn affirmation, to any interrogatories which he may, at the close of his answer, propound to the libellant, touching any matters charged in the libel, or touching any matter of defense set up in the answer, subject to the like exception as to matters which shall expose the libellant to any prosecution or punishment or forfeiture as is provided in the 31st rule. In default of due answer by the libellant to such interrogatories, the court may adjudge the libellant to be in default, and dismiss the libel, or may compel his answer in the premises by attachment, or take the subject matter of the interrogatory *pro confesso*, in favor of the defendant, as the court, in its discretion, shall deem most fit to promote public justice.

33

WHEN DISPENSED WITH.

Where either the libellant or the defendant is out of the country, or unable from sickness or other casualty to make an answer to any interrogatory on oath or solemn affirmation at the proper time, the court may, in its discretion, in furtherance of the due administration of justice, dispense therewith, or may award a commission to take the answer of the defendant when and as soon as it may be practicable.

34

INTERVENORS TO GIVE STIPULATIONS.

If any third person shall intervene in any cause of admiralty and maritime jurisdiction *in rem* for his own interest, and he is entitled according to the course of admiralty proceedings to be heard for his own interest therein, he shall propound the matter in suitable allegations, to which, if admitted by the court, the other party or parties in the suit may be required by order of the court to make due answer; and such further proceedings shall be had, and decree rendered by the court therein, as to law and justice shall appertain. But every such intervenor shall be required, upon filing his allegations, to give a stipulation with sureties, to abide by the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court.

The George Prescott, *1 Ben., 4;* The Idaho, *4 Ben., 272;* The Jenny Lind, *3 Blatch., 513;* The Old Concord, *1 Brown, 276;* The Prindiville, *1 Brown, 485;* The Ann C. Pratt, *1 Curt., 340;* The Harmony, *1 Gall., 123;* The Monticello v. Mollison, *17 How., 152;* The Packet, *3 Mason, 255;* U. S. v. Four Hundred and Twenty-two Casks of Wine, *1 Pet., 547;* Houseman v. The North Carolina, *15 Pet., 40;* The Taranto, *1 Spr., 170;* U. S. v. The Lion, *1 Spr. 399;* The Boston, *1 Sum., 328;* The Henry Ewbank, *1 Sum,, 400;* The Mary Ann, *Ware, 104;* The Rising Sun, *Ware 383;* The Dowthorp, *2 Wm. Rob., 73.*

35

STIPULATIONS—HOW TAKEN.

The stipulations required by the last preceding rule, or on appeal, or in any other admiralty or maritime proceeding, shall be given and taken in the manner prescribed by rule fifth as amended.

Rules; *14 Wall.*, xi.

36

EXCEPTIONS TO PLEADINGS.

Exceptions may be taken to any libel, allegation, or answer, for surplusage, irrelevancy, impertinence or scandal, and if, upon reference to a master, the exception shall be reported to be so objectionable, and allowed by the court, the matter shall be expunged at the cost and expense of the party in whose libel or answer the same is found.

Quinn v. The Transport, *1 Ben.*, *86;* The Pioneer, *1 Deady*, *58;* The Active, *1 Deady*, *165;* The California, *1 Saw.*, *463;* Pratt v. Thomas, *Ware*, *427;* The Pratt, *Ware*, *495*.

37

ANSWERS BY GARNISHEES.

In cases of foreign attachment, the garnishee shall be required to answer on oath or solemn affirmation, as to the debts, credits or effects of the defendant in his hands, and to such interrogatories touching the same as may be propounded by the libellant; and if he shall refuse or neglect so to do, the court may award compulsory process *in personam* against him. If he admit any debts, credits or effects, the same shall be held in his hands, liable to answer the exigency of the suit.

38

FREIGHT TO BE BROUGHT INTO COURT.

In cases of mariners' wages, or bottomry, or salvage, or other proceedings *in rem*, where freight or other proceeds of property are attached to, or are bound by the suit, which are in the hands or possession of any person, the court may, upon due application by petition of the party interested, require the party charged with the possession thereof to appear and show cause why the same should not be brought into court to answer the exigency of the suit; and if no sufficient cause be shown, the court may order the same to be brought into court to answer the exigency of the suit, and upon failure of the party to comply with the order, may award an attachment or other compulsive process to compel obedience thereto.

Gates v. Johnson, *21 Law Rep.*; *279*; The Caroline, *1 Low.*, *173*.

39

DISMISSAL FOR WANT OF PROSECUTION.

If, in any admiralty suit, the libellant shall not appear and prosecute his suit according to the course and orders of the court, he shall be deemed in default and contumacy; and the court may, upon application of the defendant, pronounce the suit to be deserted, and the same may be dismissed with costs.

40

DECREE MAY BE SET ASIDE.

The court may, in its discretion, upon the motion of the defendant, and the payment of costs, rescind the decree in any suit in which, on account

of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the court may direct.

Gaines v. Travis, *Abb. Adm'y. 297;* Northrop v. Gregory, *2 Abb. U. S., 503;* The Illinois, *1 Brown, 13;* Snow v. Edwards, *2 Low., 273;* Scott v. The Young America, *1 Newb., 107;* Russell v. The Oriental, *9 C. L. N., 134.*

41

SALES OF PROPERTY.

All sales of property under any decree in admiralty, shall be made by the marshal or his deputy, or other proper officer assigned by the court where the marshal is a party in interest, in pursuance of the orders of the court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the court, by the officer making the sale, to be disposed of by the court according to law.

42

MONEY TO BE DEPOSITED.

All moneys paid into the registry of the court shall be deposited in some bank designated by the court, and shall be so deposited in the name of the court, and shall not be drawn out except by a check or checks signed by a judge of the court, and countersigned by the clerk, stating on whose account and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The clerk shall keep a regular book, containing a

memorandum and copy of all the checks so drawn, and the date thereof.

43

PETITIONS FOR REMNANTS.

Any person having an interest in any proceeds in the registry of the court, shall have a right by petition and summary proceeding to intervene *pro interesse suo*, for a delivery thereof to him; and upon due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice; and if such petition or claim shall be deserted, or upon a hearing be dismissed, the court may, in its discretion, award costs against the petitioner in favor of the adverse party.

44

REFERENCES TO COMMISSIONERS.

In cases where the court shall deem it expedient or necessary for the purposes of justice, the court may refer any matters arising in the progress of the suit to one or more commissioners to be appointed by the court to hear the parties and make report thereon. And such commissioner or commissioners shall have and possess all the powers in the premises which are usually given to or exercised by masters in chancery in references to them, including the power to administer oaths, and to examine the parties and witnesses touching the premises.

The E. C. Scranton, *2 Ben., 81;* The Baltic, *3 Ben., 195;* The E. C. Scranton, *4 Ben., 127;* The Transit, *4 Ben., 138;* The Potomac, *2 Black, 581;* Shaw v. Collyer, *4 Blatch., 370;* Harris v. Wheeler, *8 Blatch., 1;* Taber v. Jenny, *1 Spr., 315.*

45

APPEALS FROM DISTRICT TO CIRCUIT COURTS.

All appeals from the district to the circuit court must be made while the court is sitting, or within such other period as shall be designated by the district court by its general rules, or by an order specially made in the particular suit, or in case no such rule or order be made, then within thirty days from the rendering of the decree.

13 Wall, xiv.

46

RULES OF INFERIOR COURTS.

In all cases not provided for by the foregoing rules, the district and circuit courts are to regulate the practice of the said courts respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty.

47

IMPRISONMENT FOR DEBT.

In all suits *in personam* where a simple warrant of arrest issues and is executed, bail shall be taken by the marshal and the court in those cases only in which it is required by the laws of the State where an arrest is made upon similar or analogous process issuing from the State courts. And imprisonment for debt on process issuing out of the Admiralty Court is abolished in all cases where, by the laws of the State in which the court is held, imprisonment for debt has been, or shall be hereafter abolished upon similar or analogous process issuing from a State court.

10 How., v.; Gardner v. Isaacson, *Abb. Adm'y. 141;* Gaines v. Travis, *Abb. Adm'y, 422;* The Kentucky, *4 Blatch., 448;* Matter of Freeman, *2 Curt., 491;* La. Ins. Co. v. Nickerson, *2 Low., 310;* Hodge v. Bemis, *12 Law Rep., 470;* Hanson v. Fowle, *1 Saw., 497;* Campbell v. Hadley, *1 Spr., 470;* Act of 1867.

48

LIMITATION OF TWENTY-SEVENTH RULE.

The 27th rule shall not apply to cases where the sum or value in dispute does not exceed fifty dollars exclusive of costs, unless the district court shall be of opinion that the proceedings prescribed by that rule are necessary for the purposes of justice in the case before the court.

10 How., vi.

49

TESTIMONY ON APPEAL.

Further proof taken in a circuit court upon an admiralty appeal, shall be by deposition, taken before some commissioner appointed by a circuit court, pursuant to the acts of Congress in that behalf, or before some officer authorized to take depositions by the thirtieth section of the act of Congress of the 24th of September, 1789 (*R. S., sec. 863*), upon an oral examination and cross-examination, unless the court in which such appeal shall be pending, or one of the judges thereof, shall, upon motion, allow a commission to issue to take such deposition upon written interrogatories and cross-interrogatories. When such deposition shall be taken by oral examination, a notification from the magistrate before whom it is to be taken, or from the clerk of

the court in which such appeal shall be pending, to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, shall be served on the adverse party, or his attorney, allowing time for their attendance, after being notified, not less than twenty-four hours, and in addition thereto, one day, Sundays exclusive, for every twenty miles of travel; *provided*, that the court in which such appeal may be pending, or either of the judges thereof, may upon motion, increase or diminish the length of notice above required.

13 How., vi.

50

When oral evidence shall be taken down by the clerk of the district court, pursuant to the above-mentioned section of the act of Congress, and shall be transmitted to the circuit court, the same may be used in evidence on the appeal, saving to each party the right to take the depositions of the same witnesses, or either of them, if he should so elect.

13 How., vi.

51

REPLICATIONS DISALLOWED.

When the defendant in his answer alleges new facts, these shall be considered as denied by the libellant, and no replication, general or special, shall be allowed. But within such time after the answer is filed as shall be fixed by the district court, either by general rule or by special order, the libellant may amend his libel so as to confess and avoid or

explain or add to the new matters set forth in the answer; and within such time as may be fixed in like manner, the defendant shall answer such amendments.

17 How., vi.

52

TRANSCRIPTS ON APPEAL.

The clerks of the district courts shall make up the records to be transmitted to the circuit courts, on appeals, so that the same shall contain the following:

1. The style of the court.

2. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.

3. If bail was taken, or property was attached or arrested, the process of arrest or attachment and the service thereof, all bail and stipulations, and if any sale has been made, the orders, warrants and reports relating thereto.

4. The libel, with the exhibits annexed thereto.

5. The pleadings of the defendant, with the exhibits annexed thereto.

6. The testimony on the part of the libellant and any exhibit not annexed to the libel.

7. The testimony on the part of the defendant and any exhibits not annexed to his pleadings.

8. Any order of the court to which exception was made.

an index thereto; and he shall certify the entire document, at the end thereof, under the seal of the court, to be a transcript of the record of the district court in the cause named at the beginning of the copy made up pursuant to this rule; and no other certificate of the record shall be needful or inserted.

17 How., vi.

53

PROCEEDINGS ON CROSS LIBELS.

Whenever a cross-libel is filed upon any counter claim arising out of the same cause of action for which the original libel was filed, the respondent in the cross-libel shall give security in the usual amount and form to respond in damages as claimed in said cross-libel, unless the court on cause shown, shall otherwise direct, and all proceedings upon the original libel shall be stayed until such security shall be given.

7 Wall., v; The Bristol, *4 Ben., 55;* The Toledo, *1 Brown, 445;* Keene v. The Whistler, *2 Saw., 34;* The Sapphire, *18 Wall., 51;* The Geo. H. Parker, *23 1. R. Rec., 83.*

54

When any ship or vessel shall be libeled, or the owner or owners thereof shall be sued, for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods, or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or for

feiture done, occasioned or incurred, without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the said act above recited (*R. S., secs. 4283–4286*), the said owner or owners shall and may file a libel or petition in the proper district court of the United States, as hereinafter specified, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel and her freight for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation, with sureties, for payment thereof into court whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight, to a trustee to be appointed by the court under the fourth section of said act (*R. S., sec. 4285*); and, upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage, or injury, citing them to appear before the said court and make due proof of their respective claims at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice served through

the post-office, or otherwise, as the court, in its discretion, may direct; and the said court shall, also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims.

In re The Prov. & N. Y. Steamhip Co., *6 Ben., 124;* The Oceanus, *6 Ben., 258;* The Whistler, *2 Saw., 348;* Norwich Co. v. Wright, *13 Wall., 104.*

55

Proof of all claims which shall be presented in pursuance of said monition, shall be made before a commissioner to be designated by the court, subject to the right of any person interested to question or controvert the same; and, upon the completion of said proofs, the commissioner shall make report of the claims so proven, and upon confirmation of said report, after hearing any exceptions thereto, the moneys paid or secured to be paid into court as aforesaid, or the proceeds of said ship or vessel and freight (after payment of costs and expenses), shall be divided *pro rata* amongst the several claimants, in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving, however, to all parties any priority to which they may be legally entitled.

56

In the proceedings aforesaid, the said owner or owners shall be at liberty to contest his or their liability, or the liability of said ship or vessel for said embezzlement, loss, destruction, damage or

injury (independently of the limitation of liability claimed under said act), provided that, in his or their libel or petition, he or they shall state the facts and circumstances by reason of which exemption from liability is claimed; and any person or persons claiming damages as aforesaid, and who shall have presented his or their claim to the commissioner under oath, shall and may answer such libel or petition, and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability under the said act of Congress, or both.

57

The said libel or petition shall be filed and the said proceedings had in any district court of the United States in which said ship or vessel may be libeled to answer for any such embezzlement, loss, destruction, damage, or injury; or, if the said ship or vessel be not libeled, then in the district court for any district in which the said owner or owners may be sued in that behalf. If the ship have already been libeled and sold, the proceeds shall represent the same for the purposes of these rules.

RULES OF THE DISTRICT COURTS

OF THE

UNITED STATES,

FOR THE

DISTRICTS OF MICHIGAN.

IN ADMIRALTY.

1

SPECIAL SESSIONS.

A special session of the court will be held on the first Tuesday of every month, at ten o'clock in the forenoon, at which special sessions all process must be made returnable. And in case of the non-attendance of the judge at the time hereby appointed, or at any other time which may by special order be appointed for any special session of the court, all process and proceedings shall stand continued without prejudice, without further order, to the next special session, or to some earlier day for that purpose appointed by the judge.

2

ATTACHMENTS IN CASES IN PERSONAM.

In suits *in personam*, where the claim is for liquidated damages, or the respondent is a non-

ident of the district, the mesne process may be citation to the respondent, with a clause therein recting an attachment of his goods and chattels the amount sued for, or if such property cannot found, to attach his credits and effects to a like nount in the hands of the garnishees named erein.

Gen. Ad. Rules 2 and 7 and cases cited; Bouysson v. Miller, *Bee, 186;* Atkins v. The Fibre Disintegrating Co., *7 Blatch., 555;* Same v. Same, *1 Ben., 118;* Casey v. Leary, *2 Ben., 530;* Cushing v. Laird, *4 Ben., 70;* N. J. Steam Nav. Co. v. Merchants' Bank, *6 How., 344;* La. Ins. Co. v. Nickerson, *2 Low., 310;* Boyd v. Urquhart, *1 Spr., 423;* Clarke v. N. J. Steam Nav. Co., *1 Story, 531;* Atkins v. The Disintegrating Co., *18 Wall., 272;* Ex parte Graham, *3 Wash., 460;* Manro v. Almeida, *10 Wheat., 473;* N. E. Ins. Co. v. Det. & Cleve. Steam Nav. Co., *13 Int. Rev. Rec., 94;* Manchester v. Hotchkiss, *13 Int. Rev. Rec., 125;* Wilson v. Pierce, *15 Law Rep., 137.*

3

RETURN DAY OF PROCESS.

All process shall bear test of the day on which it is issued, and shall be made returnable on the first Tuesday of the month, unless otherwise directed by special order; provided that no mesne process shall be returnable in less than fourteen days, nor more than three months, from the date and issue thereof.

4

PROCESS—WHEN TO BE SERVED.

In suits *in rem* the mesne process shall be served, and the required notices given and published twice

a week, at least fourteen days before the return day of the process, unless a shorter time shall be prescribed by special order, founded upon the exigencies of the particular case.

5

NOTICES OF ATTACHMENTS IN PERSONAM.

In cases *in personam*, where property has been arrested, and the respondent has not been personally served, like notice shall be given of the seizure and of the time assigned for the return of such process and the hearing of the cause, as is now required in cases of proceedings *in rem*.

6

FORM OF NOTICES.

The notice herein contemplated shall contain the title of the suit, a summary statement of the cause of action, the amount claimed by the libellant, and the day and place fixed for the return of the process, and shall have the name of the proctor of the libellant, and that of the marshal and his deputy by whom the arrest shall have been made, affixed thereto.

7

PAPERS TO BE LEGIBLE.

Libels, answers and all other pleadings and papers to be filed, shall be so plainly written as to be readily legible, and shall be free, to all reasonable extent, from interlineations and erasures; and it shall be the duty of the clerk to reject all papers delivered to him to be filed which are not in conformity to this rule, and which are not properly indorsed.

8

LIBELS—WHEN TO BE VERIFIED.

All libels (except on behalf of the United States) praying a warrant of arrest or an attachment of property, *in rem* or *in personam*, shall be verified by the oath or solemn affirmation of the libellant, his agent or attorney, unless for sufficient cause shown, such oath or affirmation shall be dispensed with by the special order of the judge; but libels, informations or petitions praying a monition or citation only, without an attachment, need not be verified.

Gen. Ad. Rule 7; The Hoyle, *4 Biss., 234;* Coffin v. Jenkins, *3 Story, 108.*

9

SECURITY FOR COSTS.

The libellant shall, at the time of commencing his suit, give a bond or stipulation, with one or more sufficient sureties, in the sum of at least two hundred and fifty dollars, or deposit a like amount in court, conditioned that he will appear from time to time and abide by all orders, interlocutory and final, of the court, and pay the costs and expenses, if any, which shall be awarded against him by the final decree of this court, or of any appellate court. Provided, however, that this regulation shall not extend to suits for seamen's wages, nor to suits for salvage when the salvors have come into port in possession of the property libeled.

The Sophie, *1 Wm. Rob., 326;* The Volant, *1 Wm. Rob., 383;* The Franz et Elize, *Lush. Ad., 377;* The Peri, *Lush. Ad., 543;* The Wild Ranger,

Lush. Ad., *553;* The Mary, *L. R. 1 Ad.*, *335;* The Great Britain, *Olcott, 1;* Polydore v. Prince *Ware, 402;* The Arctic, *1 Brown, 347.*

10

In all cases not embraced within the last preceding rule, on motion of the respondent or claimant, the court will, in its discretion, direct the libellant, on pain of dismissing his libel, to give the like security.

Wheatley v. Hotchkiss, *1 Spr., 225.*

11

WHEN PROCTOR TO BE LIABLE.

If in any case a libel shall be filed before security for costs and expenses shall be filed as above required, the proctor for such libellant shall be liable for such costs and expenses to the amount specified in the said rule, until such security shall be filed ; and the payment thereof may be enforced by summary process *in personam* against such proctor.

12

FORM OF STIPULATIONS.

All stipulations in causes civil and maritime shall be executed by the principal party (if within the district), and at least one surety resident therein, and shall contain the consent of the stipulators, that in case of default or contumacy on the part of the principal or sureties, execution to the amount named in such stipulation may issue against the goods, chattels and lands of the stipulators.

13

ANSWERS TO INTERROGATORIES.

When interrogatories are propounded by the claimant or respondent at the close of his answer, touching any matter charged in the libel, or touching any matter of defense set up in the answer (in pursuance of general admiralty rule 32) the libellant shall answer the same within ten days, unless, for sufficient cause shown, he shall, by special order, be allowed a longer period; and the court may, in its discretion, require such interrogatories to be answered within a shorter time, or instanter.

14

RETURN BY GARNISHEE.

On the service of a foreign attachment, as provided in general admiralty rule 37, it shall be the duty of the garnishee named therein, on or before the return day of the process, to file with the clerk an affidavit containing a full and true statement of the property or funds in his hands belonging to the principal defendant at the time the writ was served and at the time the affidavit was made, and declare whether he has any, and, if any, what claim to any and what part thereof; and shall then, on motion of the libellant, pay into court such amount as he shall not claim, or as may be ordered by the court, or give stipulation, with sufficient surety, to abide the further order or decree of the court in relation thereto; and on his default in this behalf an attachment may issue against him, unless he shall show cause to the contrary, in four days, or on the first day the court is in session.

Smith v. Miln, *1 Abb. Adm'y, 373;* Shorey v. Rennell, *1 Spr., 418;* McDonald v. Rennell, *21 Law Rep., 157.*

15

ANSWERS BY GARNISHEE.

When interrogatories are propounded to a garnishee (in pursuance of general admiralty rule 37), a copy thereof shall be served upon the garnishee personally, or in case of his absence from his dwelling-house or usual place of abode, by leaving such copy with some person of suitable age who is a member or resident of the family; and the garnishee shall be required to answer the interrogatories within ten days after such service, unless a longer period shall, for adequate cause shown, be by special order allowed for that purpose, and the court may also, in its discretion, prescribe a shorter period.

16

EXCEPTIONS—HOW TO BE TAKEN.

Exceptions to the libel (taken in pursuance of rule 36 of the rules of practice prescribed by the Supreme Court) for surplusage, irrelevancy, impertinence or scandal, may be taken *ore tenus* on the return day of the mesne process; and exceptions to the answer or other allegation given by the respondent, taken for the like causes, in pursuance of the same rule, or in pursuance of rule 27, for want of sufficiency, fullness or distinctness, may be taken in like manner, when the answer or other allegation is put in in open court, and the court will thereupon, in its discretion, either decide upon the sufficiency of the exceptions so taken, in-

tanter, or direct the same to be drawn up in writing, and appoint a day to hear argument thereon, or refer the same to a commissioner. Written exceptions may also be filed in the first instance.

Gen. Ad. Rule 28; The Isaac Newton, *1 Abb. Adm'y, 11;* The Gustavia, *Bl. & How., 189;* The Elizabeth Frith, *Bl. & How., 195;* Furnies v. The Magoun, *Olcott, 55.*

17

COPIES OF LIBELS.

The libellant shall, within twenty days after notice of the appearance of the respondent, furnish his proctor a copy of the libel, and the time given to answer or except shall run from the day such copy is furnished. If such copy be not furnished within the twenty days above provided, the respondent shall be entitled to an order dismissing the libel.

18

ANSWERS AND EXCEPTIONS THERETO.

When at the return of the mesne process, time has been granted to answer or except to the libel, a copy of such answer or exceptions shall without delay be served on the proctor for the libellant, personally if he resides within three miles of the proctor for the claimant, otherwise either personally or by mail; and the proctor for the libellant may, within ten days after the service thereof, file and serve exceptions thereto. The claimant, within eight days after the service of such exceptions, may give a written notice of his submission to any or all of them; and if any of them are not submitted to within the time prescribed, either

party may bring the same to a hearing before the court by giving a notice of not less than two days of such hearing.

19

REPORTS OF COMMISSIONERS.

Upon the filing of the report by a commissioner to whom a reference is made, it shall be the duty of the clerk to send written notice by mail to the proctor of the party obtaining such reference, and it shall be the duty of such proctor forthwith to notify all the other proctors interested therein of the filing of such report. Exceptions to such report shall be filed within ten days after the receipt of such notice, unless the court shall extend the time for filing such exceptions. If no exceptions are filed within the time limited, said report shall stand confirmed, and a final decree may be entered in accordance therewith without further notice.

20

DISTRIBUTION OF PROCEEDS.

Whenever a majority of the claims against any vessel which has been sold are in decree, upon the application of any persons interested in the proceeds the court will order the clerk to classify and marshal the claims against such proceeds, and claims thereafter filed shall be paid only after the payment of those included in his report. Upon the filing of such report and upon notice to all persons interested, in case no exceptions are filed, the court will order the report confirmed, and the proceeds distributed among those libellants whose claims are then in decree. Decrees subsequently

obtained shall be paid only from the remnants, unless in cases where delay has been necessarily occasioned, the court shall otherwise order.

21

PROOF OF PUBLICATION.

No default for want of an appearance, in cases where no bond had been given, shall be entered, until an affidavit of the publication of the notice required by the 4th and 6th rules of this court shall have been made and filed in the cause; nor shall any sale be confirmed, until like proof be made of the publication of the notice required by the 19th rule, and it shall be the duty of the clerk to procure such affidavits as soon as publication is made.

22

TRIALS BY JURY.

In all admiralty cases hereafter commenced, if the libellant desires a trial by jury he shall demand the same in his libel. If such trial be desired by the respondent he shall demand the same in his answer. Unless so demanded a trial by jury shall be deemed to have been waived. Provided, however, that the court may, upon special application, order a jury for reasons not known to the pleader at the time his libel or answer is filed.

Gillet v. Pierce, *1 Brown, 553.*

23

NOTICE AND PLACE OF SALE.

Not less than ten days' notice, by publication at least five times, shall be given of the sale of property except where otherwise specially ordered by

the court. If the property be within the county of Wayne or Kent, such sale shall take place at the outer front door of the District Court House; if elsewhere, it shall take place at or near where the property is situated.

24

OFFICIAL PAPERS.

All notices required by the rules and practice of this court in admiralty and seizure cases to be printed in a newspaper, shall be published in the Eastern District in the Detroit *Daily Post and Tribune*, and in the Western District in the Grand Rapids *Daily Eagle.*

25

OFFICIAL DEPOSITORIES.

In pursuance of general admiralty rule 42, the Second National Bank of Detroit, and the First National Bank of Grand Rapids are hereby designated as the places of deposit for money paid into court.

26

CUSTODIAN'S FEES

No allowance for the expenses of keeping any ship or vessel beyond the sum of one dollar per day shall be made to the marshal, except upon the affidavit of the ship-keeper, stating his employment and service, and the amount agreed to be paid therefor; and that he actually remained on board said ship or vessel during the whole time for which his services are charged, and that no officer of the court is interested in the amount claimed to be due him; and a copy of such affi-

vit shall be served with the copy of the bill of s or statement of allowance claimed.

The Hibernie, *1 Spr., 78.*

27

EXPENSE OF A TUG.

The expense of a tug employed to assist in the rest of vessels shall not hereafter be taxed or arged in any case where the sum claimed in the bel is less than $25; nor shall such expense in ny case be taxed or charged to an amount exceeding one-fifth the sum so claimed in the libel.

28

WRITS OF RESTITUTION.

In no case shall the marshal release or discharge rom his custody a boat or vessel, without a writ of estitution from the clerk under the seal of the ourt; and the clerk shall issue no such writ if here are any claims on file undisposed of or unatisfied, without the special order of the court.

29

APPEALS, WHEN AND HOW TAKEN.

Appeals in admiralty to the circuit court shall be taken within ten days from the date of the decree, unless further time be given by special order of the judge. The appeal shall be in writing, and shall specify particularly from what part of the decree, if less than the whole, the appeal is taken; also, whether it is intended to make new allegations or proofs, and if so, what; and whether it is intended to pray for any other relief, and, if so, what; and on the trial above the ap-

pellant shall be strictly confined to the specifications in his appeal. Either or both parties may appeal in this manner, and no answer shall be required from the appellee; but for any irregularity he may except or move to dismiss. The appeal shall be filed with the clerk of the district court, and from that time, security having been given in such sum as shall be fixed by the district judge, and with sureties approved by said judge, or the clerk of the district court, it shall be considered as perfected; and it shall be the duty of said clerk within twenty days, unless a longer time shall be allowed by the district judge, to prepare and deliver to the clerk of the circuit court, together with said appeal, the records in such case required by the 53d rule of the Supreme Court rules, except as herein otherwise provided. And when this is done, so much of the case as is appealed shall be in the exclusive control of the circuit court. With a view to provide for the certifying of testimony in cases of appeal, the court shall, unless otherwise ordered, cause all oral testimony to be reduced to writing as the trial progresses, either by the judge, the clerk, or a commissioner designated for that purpose, the cost of which shall be taxed in the bill of costs; and such testimony shall stand upon the same footing as depositions, and be certified up accordingly. Upon written application to the court from which the appeal is to be taken, proceedings on execution may be suspended, until the time for perfecting the appeal shall have elapsed. The amount of security to be given by the appellant shall be

ixed by the court from which the appeal is taken, and its sufficiency shall be approved by the court, if given in term time, otherwise by the clerk. In all cases the clerk shall certify the original proceedings and all depositions read on the hearing and commissioners' reports into the circuit court, unless otherwise ordered.

Hayford v. Griffith, *3 Bl. C. C., 34;* The Ellen, *4 Blatch., 107;* Greigg v. Reade, *Crabbe, 64;* U. S. v. Hogsheads of Molasses, *1 Curtis, 276;* U. S. v. The Glamorgan, *2 Curt., 236;* The Enterprise, *2 Curt., 317;* The Montgomery v. The Betsey, *1 Gall., 416;* Ives v. Merchants' Bank, *12 How., 159;* Montgomery v. Anderson, *21 How., 386;* U. S. v. Haynes, *2 McLean, 155;* Nall v. The Illinois, *6 McLean, 413;* Backus v. The Marengo, *6 McLean, 499;* The Hollen, *1 Mason, 431;* Norton v. Rich, *3 Mason, 443;* Canter v. Am. Ins. Co., *3 Pet., 307;* The New England, *3 Sum., 495;* Randolph v. Barbour, *6 Wheat., 128;* The Jonquille, *6 Wheat., 452;* U. S. v. $5,700 in Specie, *1 Woods, 14;* Otis v. The Rio Grande, *1 Woods, 593;* Drake v. The Oriental, *9 C. L. N., 321.*

30

GENERAL ISSUE IN SEIZURE CASES.

In seizure cases the defendant or claimant, instead of specially traversing any or all of the allegations of the information, may plead in substance "that the goods, articles and property in the said information mentioned did not, nor did any or either of them, or any part thereof, become forfeited, in manner and form, as in the said information in that behalf alleged," or may otherwise directly and expressly deny, in similar general terms, the forfeiture alleged, which shall be

deemed a good plea of the general issue to such information, and shall put in issue all the allegations thereof.

31

REPLICATIONS DISALLOWED.

When in any such seizure case, the defendant or claimant shall, in his plea, make any affirmative allegation, or allegation of matters of fact, by way of defense or answer to the information therein, the same shall be considered as denied by the district attorney and the United States, and no replication, either general or special, shall be required or allowed. Within twenty days after such plea shall be filed and served, the United States may amend the information, as of course, and may add new allegations for the purpose of avoiding, explaining or adding to the new matter alleged in such plea. And the claimant shall have twenty days, after the filing and service of such amended information, to file and serve his plea to the same.

32

REMISSION OF FINES, PENALTIES AND FORFEITURES.

Preparatory to the presentation of a petition for the remission or mitigation of any fine, penalty, forfeiture or disability, a copy of such petition, together with a notice of the time and place of presenting the same, shall be served on the attorney of the United States, and another copy, with the like notice, on the person or persons claiming the fine, penalty, or forfeiture, ten days before the time of preferring the petition.

The petition, in addition to the other circum-

stances of the case, shall state whether any, and what suit has been instituted, and what proceedings have been had for the recovery of the fine, penalty, or forfeiture, up to the time of preferring the petition. The clerk, under the direction of the judge, shall prepare a statement of the facts relative to the case which appear upon the inquiry, and forthwith transmit the same, together with the petition, to the Secretary of the Treasury.

33

WARRANTS AND PROCEEDINGS TO BE RETURNED TO CLERK.

All warrants issued by any commissioner in this district, or copies of the same, minutes of examination and recognizances, with all the doings of said commissioner upon said warrants, shall be forthwith certified and returned by him to the clerk of this court; and if such commissioner shall neglect or refuse to return the same, he may be forthwith compelled by rule of court, and in case of disobedience he may be proceeded against by attachment or for a contempt.

34

INTERNAL REVENUE CASES.

No commissioner shall issue a warrant for violation of the internal revenue laws upon the complaint of any person not belonging to the revenue service without first laying such complaint before the district attorney, or his assistant, and obtaining in writing his consent to the proceeding. A violation of this rule by any commissioner will be

regarded as cause for his removal, and no fees will be allowed to such commissioner where this rule is not complied with.

35

RECORD OF COMMISSIONER'S RETURNS.

It shall be the duty of the clerk to keep a book labeled "Record of Commissioners' Returns," the first pages of which shall contain an accurate list of all the commissioners in this district, and in which he shall enter each return as received by the name of the defendant, and the name of the commissioner also; and shall number the returns progressively and file the same accordingly, and make an index of the names of both defendants and commissioners, and said books and files, as well as the criminal files and dockets, shall be open to inspection during office hours.

36

INFORMATION, WHEN TO BE FILED.

No information against a person charged with crime shall be filed until after the filing of the report of a commissioner showing arrest, examination or waiver, commitment or bail; nor shall any plea of *nolo contendere* be signed except in the presence of the district attorney or his assistant.

37

SCIRE FACIAS.

When default is made by any party or witness bound by recognizance in any criminal proceeding, the clerk shall immediately issue a *scire facias* thereon.

38

OFFICERS MAY NOT BE SURETIES.

All attorneys, marshals, clerks and other officers of the circuit and district courts are hereby prohibited from becoming bail in any criminal case in this court.

39

AFFIDAVITS FOR CONTINUANCE

On motion by the defendant for a continuance, it shall be necessary for him, if in attendance on the court, to make an affidavit of merits and of the facts and circumstances on account of which he applies for the same. If it be for the absence of witnesses, he shall state their names, and particularly what he expects to prove by their testimony; and if the opposite party will admit that the witnesses, if present, would so testify, then a continuance shall not be granted. If the party applying for such continuance be not in attendance in court, the statement of his counsel shall be received in lieu of such affidavit, unless the opposite party shall require the affidavit of counsel to the same extent as that required from the defendant as above.

40

AFFIDAVITS BY POOR DEFENDANTS.

In all applications under the eleventh section of the act of Congress of August 8, 1846 (*R. S., sec. 878*), the respondent seeking aid of the government for the purpose of procuring the attendance of witnesses for his defense must set forth in his affidavit,

First. The facts which he expects to prove by each of the absent witnesses, and that such facts are true, or that the respondent believes them to be true.

Second. Where the witnesses reside, or where they can be found.

Third. The want of sufficient means and the actual inability of the respondent to pay the fees of such witnesses for their attendance.

The process of the court will not be ordered for more than two witnesses to each distinct fact, and in no case to establish the character of the respondent by general reputation.

41

BOOK OF FINES.

A book shall be kept by the clerk, in which he shall enter a full and particular account under the title of each criminal cause depending in the court of all moneys paid into court in such cause, and of the payment thereof, and such book shall at all times be open to inspection.

MISCELLANEOUS.

42

PAPERS NOT TO BE TAKEN.

No libel, answer, declaration, information, indictment, deposition, or other pleading or paper on file, shall be taken from the clerk's office without an order of the court or of the judge. Copies of any such pleadings or papers shall be furnished by the clerk on the request of either party, and his fees therefor shall be paid on demand, and taxed as costs in the case.

43

RULES OF CIRCUIT COURT.

In all cases not provided for by the rules of this court, the rules of the Circuit Court of the United States for these districts, for the time being (whether adopted before or after these rules), so far as the same may be applicable, shall regulate the practice of this court.

GENERAL ORDERS IN BANKRUPTCY

PRESCRIBED BY

THE SUPREME COURT.

APRIL 12, 1875.

1

DUTIES OF CLERKS OF DISTRICT COURTS.

The clerks of the several district courts shall enter upon each petition in bankruptcy the day, and the hour of the day, upon which the same shall be filed; and shall also make a similar note upon every subsequent paper filed with them, except such papers as have been filed before the register, and so indorsed by him; and the papers in each case shall be kept in a file by themselves. No paper shall be taken from the files for any purpose except by order of the court. Every paper shall have indorsed upon it a brief statement of its character. The clerks shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced; and the number of each case shall be indorsed on every paper. The docket shall be so arranged that a

brief memorandum of every proceeding in each case shall be entered therein, in a manner convenient for reference, and shall at all times be open for public inspection. The clerks shall also keep separate minute-books for the record of proceedings in bankruptcy, in which shall be entered a minute of all the proceedings in each case, either of the court or of a register of the court, under their respective dates.

2

PROCESS.

All process, summons and subpœnas shall issue out of the court under the seal thereof, and be tested by the clerk; and blanks, with the signature of the clerk and seal of the court, may, upon application, be furnished to the registers.

3

APPEARANCE.

Proceedings in bankruptcy may be conducted by the bankrupt in person in his own behalf, or by a petitioning or opposing creditor; but a creditor will only be allowed to manage before the court his individual interest. Either party may appear and conduct the proceedings by attorney, who shall be an attorney or counselor authorized to practice in the circuit or district court. The name of the attorney or counselor, with his place of residence and business, shall be entered upon the docket, with the date of the entry. All papers or proceedings offered by an attorney to be filed shall be indorsed as above required; and orders granted on motion shall contain the name of

the party or attorney making the motion. Notices and orders which are not, by the act or by these rules, required to be served on the party personally, may be served upon his attorney.

4

COMMENCEMENT OF PROCEEDINGS.

Upon the filing of a petition in case of voluntary bankruptcy, or as soon as any adjudication of bankruptcy is made upon a petition filed in case of involuntary bankruptcy, the petition shall be referred to one of the registers in such manner as the district court shall direct, and the petitioner shall furnish the register with a copy of the papers in the case, and thereafter all the proceedings required by the act shall be had before him, except such as are required by the act to be had in the district court, or by special order of the district judge, unless some other register is directed to act in the case.

The order designating the register to act upon any petition shall name a day upon which the bankrupt shall attend before the register, from which date he shall be subject to the orders of the court in all matters relating to his bankruptcy, and may receive from the register a protection against arrest, to continue until the final adjudication on his application for a discharge, unless suspended or vacated by order of the court.

A copy of the order shall forthwith be sent by mail to the register, or be delivered to him personally, by the clerk or other officer of the court.

5

REGISTERS.

The time when and the place where the registers shall act upon the matters arising under the several cases referred to them, shall be fixed by special order of the district court, or by the register acting under the authority of a general order, in each case, made by the district court; and at such times and places the registers may perform the acts which they are empowered to do by the act, and conduct proceedings in relation to the following matters, when uncontested, viz.: making adjudication of bankruptcy on petition of the debtor; administering oaths; receiving the surrender of a bankrupt; granting protection thereon; giving requisite direction for notices, advertisements, and other ministerial proceedings; taking proofs of claims; ordering payment of rates and taxes, and salary or wages of persons in the employment of the assignee; ordering amendments, or inspection, or copies, or extracts of any proceedings; taking accounts of proceeds of securities held by any creditor; taking evidence concerning expenses and charges against the bankrupt's estate; auditing and passing accounts of assignees; proceedings for the declaration and payment of dividends, and taxing costs in any of the proceedings; and generally dispatching all administrative business of the court in matters of bankruptcy, and making all requisite uncontested orders and directions therein, which are not, by the acts of Congress concerning bankruptcy, specifically required to be made, done, or performed by the dis-

trict court itself; all of which shall be subject to the control and review of the said court. *Provided, however*, That by the surrender of a bankrupt mentioned and referred to in this order and in the act in that behalf is intended and understood a personal submission of the bankrupt himself for full examination and disclosure in reference to his property and affairs, and not a surrender or delivery of the possession of his property.

6

DISPATCH OF BUSINESS.

Every register, in performing the duties required of him under the act, and by these orders, or by orders of the district court, shall use all reasonable dispatch, and shall not adjourn the business but for good cause shown. Six hours' session shall constitute a day's sitting if the business requires; and when there is time to complete the proceedings in progress within the day, the party obtaining any adjournment or postponement thereof may be charged, if the court or register think proper, with all the costs incurred in consequence of the delay.

7

EXAMINATION AND FILING OF PAPERS.

It shall be the duty of the register to examine the bankrupt's petition and schedules filed therewith, and to certify whether the same are correct in form; or, if deficient, in what respect they are so; and the court may allow amendments to be made in the petition and schedules upon the application of the petitioner, upon proper cause

shown, at any time prior to the discharge of the bankrupt. The register shall indorse upon each paper filed with him the time of filing, and, at the close of the last examination of the bankrupt, the register having charge of the case shall file all the papers relating thereto in the office of the clerk of the district court, and these papers, together with those on file in the clerk's office, and the entries in the minute-book, shall constitute the record in each case; and the clerk shall cause the papers in each case to be bound together.

8

ORDERS BY THE REGISTER.

Whenever an order is made by a register in any proceeding in which notice is required to be given to either party before the order can be made, the fact that the notice was given, and the substance of the evidence of the manner in which it was given shall be recited in the preamble to the order, and the fact also stated that no adverse interest was represented at the time and place appointed for the hearing of the matter upon such notice; and whenever an order is made where adverse interests are represented before the register, the fact shall be stated that the opposing parties consented thereto, or that the adverse interest represented made no opposition to the granting of such order; provided, however, if any party interested adversely to such order shall not, before the hearing of the application therefor, give reasonable notice in writing to the register that he intends to contest the same, and objects to its being heard by the register, the same shall be

heard by the register as by consent. *But all* such orders may be reviewed by the district court at the request of any party aggrieved, upon his *paying* the cost of certifying the matter to said court within ten days from the making of the order; which request and payment shall be entered by the register on his docket; and he shall thereupon forthwith certify the said matter to the court, *and* said court, upon making its decision, may make such order with regard to the costs as justice shall require.

9

NOTIFICATION TO ASSIGNEE OF HIS APPOINTMENT.

It shall be the duty of the register, immediately upon the appointment of an assignee, as prescribed in sections twelve and thirteen* of the act (should he not be present at such meeting), to notify him, by personal or mail service, of his appointment; and in such notification the assignee so appointed shall be required to give notice forthwith to the register of his acceptance or rejection of the trust.

No official assignee shall be appointed by the court or judge; nor any general assignee to act in any class of cases.

No additional assignee shall be appointed by the court or judge under section thirteen† of the act, except upon petition of one-fourth in number and value of the creditors who have proved their debts, and upon good and sufficient cause shown.

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* §§ 5033, 5034, R. S. † § 5034, R. S.

10

TESTIMONY, HOW TAKEN.

The examination of witnesses before a register in bankruptcy may be conducted by the party in person or by his counsel or attorney, and the witnesses shall be subject to examination and cross-examination, which shall be had in conformity with the mode now adopted in courts of law. The depositions upon such examination shall be taken down in writing by or under the direction of the register in the form of narrative, unless he determines that the examination shall be by question and answer in special instances, and when completed shall be read over to the witness and signed by him in the presence of the register. Any question or questions which may be objected to shall be noted by the register upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the question; and the court shall have power to deal with the costs of incompetent, immaterial or irrelevant depositions, or parts of them, as may be just. In case of refusal of a witness to attend, or to testify before a register, the same proceedings may be had as are now authorized with respect to witnesses to be produced on examination before an examiner of any of the courts of the United States on written interrogatories.

11

MINUTES BEFORE REGISTER, FILING, ETC.

A memorandum made of each act performed by a register shall be in suitable form, to be en-

tered upon the minute-book of the court, and shall be forwarded to the clerk of the court not later than by mail the next day after the act has been performed. Whenever an issue is raised before the register in any proceedings, either of fact or law, he shall cause the same to be stated in writing in the manner required by the *fourth* and *sixth** sections of the act, and certify the same forthwith to the district judge for his decision. The pendency of the issue undecided before a judge shall not necessarily suspend or delay other proceedings before the register or court in the case.

12

ACCOUNTS FOR SERVICES OF REGISTER AND MARSHAL.

Every register shall keep an accurate account of his traveling and incidental expenses, and those of any clerk or other officer attending him in the performance of his duties in any case or number of cases which may be referred to him; and shall make return of the same, under oath, with proper vouchers (when vouchers can be procured), on the first Tuesday in each month; and the marshal shall make his return, under oath, of his actual and necessary expenses in the service of every warrant addressed to him, and for custody of property, publication of notices, and other services, and other actual and necessary expenses paid by him, with vouchers therefor whenever practicable, and also with a statement that the amounts charged by him are just and reasonable.

* §§ 5009, 5010, R. S.

13

MARSHAL AS MESSENGER—SURRENDER OF PROPERTY.

In cases of voluntary bankruptcy, the bankrupt, after being decreed such, and after the appointment of an assignee or trustee, and assignment, duly made, shall, unless the court otherwise direct, deliver possession of all his property and assets (including evidences of debt and books of account), to said assignee or trustee, unless at or after such decree and before said assignment the court, on application of any creditor or creditors, and upon good cause shown by affidavit, shall deem it necessary for the interest of the creditors that possession of such property and assets should be sooner delivered up; in which case, as in cases of involuntary bankruptcy, the court may order said property and assets to be taken possession of by the marshal as messenger, directions for which may be inserted, in pursuance of such order, in the original warrant in bankruptcy, or in a special warrant to be issued for that purpose.

It shall be the duty of the marshal as messenger to take possession of the property of the bankrupt when required thereto by warrant or order of the court, and to deliver the same to the assignee or trustee when appointed and assignment made as aforesaid. The marshal, when taking possession as aforesaid, shall make an inventory of the property and assets by him received, and deliver the same, with the said property and assets, to said assignee or trustee, who shall verify the same, and if found correct and full no further inventory shall be required; *Provided, however,*

That if any goods or effects so taken into possession as the property of the bankrupt shall be claimed by or in behalf of any other person, the marshal shall forthwith notify the petitioning creditor, or assignee, if one be appointed, of such claim, and may, within five days after so giving notice of such claim, deliver them to the claimant or his agent, unless the petitioning creditor or party at whose instance possession is taken shall by bond with sufficient sureties, to be approved by the marshal, indemnify the marshal for the taking and detention of such goods and effects, and the expenses of defending against all claims thereto; and, in case of such indemnity, the marshal shall retain possession of such goods and effects, and proceed in relation thereto as if no such claim had been made; *And provided further*, that in case the petitioning creditor claims that any property not in the possession of the bankrupt belongs to him, and should be taken by the marshal, the marshal shall not be bound to take possession of the same unless indemnified in like manner. He shall also, in case the bankrupt is absent or cannot be found, prepare a schedule of the names and residences of his creditors, and the amount due to each, from the books or other papers of the bankrupt that may be seized by him under his warrant, and from any other sources of information; but all statements upon which his return shall be made shall be in writing, and sworn to by the parties making them, before one of the registers in bankruptcy of the court, or a commissioner of the courts of the United States.

In cases of voluntary bankruptcy, the marshal may appoint special deputies to act, as he may designate, in one or more cases, as messengers, for the purpose of causing the notices to be published and served as required in the eleventh* section of the act, and for no other purpose. In giving the notices required by the third subdivision of the eleventh† section of the act, it shall be sufficient to give the names, residences, and the amount of the debts (in figures) due the several creditors, so far as known, aud no more.

14

PETITIONS AND AMENDMENTS.

All petitions, and the schedules filed therewith, shall be printed or written out plainly, and without abbreviation or interlineation, except where such abbreviation and interlineation may be for the purpose of reference; and whenever any amendments are allowed, they shall be written and signed by the petitioner on a separate paper, in the same manner as the original schedules were signed and verified; and if the amendments are made to different schedules, the amendments to each schedule shall be made separately, with proper reference to the schedule proposed to be amended, and each amendment shall be verified by the oath of the petitioner in the same manner as the original schedules.

* §§ 5019, 5032, R. S. † § 5032, R. S.; § 5, act 1874.

15

PRIORITY OF ACTIONS (INVOLUNTARY BANKRUPTCY)

Whenever two or more petitions shall be filed by creditors against a common debtor, alleging separate acts of bankruptcy committed by said debtor on different days within six months prior to the filing of said petitions, and the debtor shall appear and show cause against an adjudication of bankruptcy against him on the petitions, that petition thall be first heard and tried which alleges the commission of the earliest act of bankruptcy: and in case the several acts of bankruptcy are alleged in the different petitions to have been committed on the same day, the court before which the same are pending may order them to be consolidated, and proceed to a hearing as upon one petition; and if an adjudication of bankruptcy be made upon either petition, or for the commission of a single act of bankruptcy, it shall not be necessary to proceed to a hearing upon the remaining petitions, unless proceedings be taken by the debtor for the purpose of causing such adjudication to be annulled or vacated.

16

FILING PETITIONS IN DIFFERENT DISTRICTS.

In case two or more petitions shall be filed against the same individual in different districts, the first hearing shall be had in the district in which the debtor has his domicile, and such petition may be amended by inserting an allegation of an act of bankruptcy committed at an earlier date than that first alleged, if such earlier act is

charged in either of the other petitions; and in case of two or more petitions against the same firm in different courts, each having jurisdiction over the case, the petition first filed shall be first heard, and may be amended by the insertion of an allegation of an earlier act of bankruptcy than that first alleged, if such earlier act is charged in either of the other petitions, and, in either case, the proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard; and the court which makes the first adjudication of bankruptcy shall retain jurisdiction over all proceedings therein until the same shall be closed. In case two or more petitions for adjudication of bankruptcy shall be filed in different districts by different members of the same copartnership for an adjudication of the bankruptcy of said copartnership, the court in which the petition is first filed having jurisdiction shall take and retain jurisdiction over all proceedings in such bankruptcy until the same shall be closed; and if such petitions shall be filed in the same district, action shall be first had upon the one first filed.

17

CONCERNING REDEMPTIONS OF PROPERTY AND COMPOUNDING CLAIMS.

Whenever it may be deemed for the benefit of the estate of a bankrupt to redeem and discharge any mortgage or other pledge, or deposit, or lien upon any property, real or personal, or to relieve said property from any conditional contract, and to tender performance of the conditions thereof,

or to compound any debts or other claims or securities due or belonging to the estate of the bankrupt, the assignee, or the bankrupt, or any creditor who has proved his debt, may file his petition therefor in the office of the clerk of the district court; and thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given in some newspaper, to be designated by the court, at least ten days before the hearing, so that all creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition authorizing such act on the part of the assignee.

18

PROCEEDINGS IN CASE OF COPARTNERSHIPS.

In case one or more members of a copartnership refuse to join in a petition to have the firm declared bankrupt, the parties refusing shall be entitled to resist the prayer of the petition in the same manner as if the petition had been filed by a creditor of the partnership, and notice of the filing of the petition shall be given to him in the same manner as provided by law and by these rules in the case of a debtor petitioned against; and he shall have the right to appear at the time fixed by the court for the hearing of the petition, and to make proof, if he can, that the copartnership is not insolvent, or has not committed an act of bankruptcy, and to take all other defenses which any debtor proceeded against is entitled to take by the provisions of the act; and in case an adjudication of bankruptcy

is made upon the petition, such copartner shall be required to furnish to the marshal, as messenger, a schedule of his debts and an inventory of his property, in the same manner as is required by the act in cases of debtors against whom adjudication of bankruptcy shall be made.

19

DUTIES OF ASSIGNEES.

The assignee shall, immediately on entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession, except where an inventory is furnished to him by the marshal, in which case, having verified the same, he shall add thereto a certificate that the same is correct, or that the same is correct as modified by a supplemental inventory to be annexed thereto; in which supplemental inventory he shall state any deficiency of assets named in the marshal's inventory, and shall add any property or assets not contained therein.

The assignee shall make report to the court, within twenty days after receiving the deed of assignment, of the articles set off to the bankrupt by him, according to the provisions of the fourteenth section* of the act, with the estimated value of each article, and any creditor may take exceptions to the determination of the assignee within twenty days after the filing of the report. The register may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of

*§ 5045, R. S.

either party. The substance of each monthly return of the assignee shall be sent by the register to any creditor who shall request it and pay the fee provided for notices to creditors. In case the assignee shall neglect to file any report or statement which it is made his duty to file or make by the bankrupt act, or any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the register to make an order requiring the assignee to show cause before the court, at a time specified in the order, why he should not be removed from office. The register shall cause a copy of the order to be served upon the assignee at least seven days before the time fixed for the hearing, and proof of the service thereof to be delivered to the clerk. All accounts of assignees are to be referred as of course to the register for audit unless otherwise specially ordered by the court.

20

COMPOSITION WITH CREDITORS (ARBITRATION).

Whenever an assignee shall make application to the court for authority to submit a controversy arising in the settlement of demands against the bankrupt's estate, or of debts due to it, to the determination of arbitrators, or for authority to compound and settle such controversy by agreement with the other party, the subject matter of the controversy and the reasons why the assignee thinks it proper and most for the interest of the creditors that it should be settled by arbitration or otherwise, shall be set forth clearly and distinctly

n the application; and the court, upon examination of the same, may immediately proceed to ake testimony and make an order thereon, or may lirect the assignee to give notice of the application, either by publication or by mail, or both, to the creditors who have proved their claims to appear and show cause, on a day to be named in the order and notice, why the application should not be granted, and may make such order thereon as may be just and proper.

21

DISPOSAL OF PROPERTY BY ASSIGNEE.

Upon application to the court, and for good cause shown, the assignee may be authorized to sell any specified portion of the bankrupt's estate at private sale; in which case he shall keep an accurate account of each article sold, and the price received therefor, and to whom sold; which account he shall file with his report at the first meeting of creditors after the sale. In making sale of the franchise of a corporation it may be offered in fractional parts or in certain numbers of shares corresponding to the number of shares in the bankrupt corporation.

22

PERISHABLE PROPERTY.

In all cases where goods or other articles come into possession of the messenger or assignee which are perishable, or liable to deterioration in value, the court may, upon application, in its discretion, order the same to be sold and the proceeds deposited in court.

23

SERVICE OF NOTICE.

The notice provided by the eighteenth section* of the act shall be served by the marshal or his deputy, and notices to the creditors of the time and place of meeting provided by the section† shall be given through the mail by letter, signed by the clerk of the court.

Every envelope containing a notice sent by the clerk or messenger shall have printed on it a direction to the postmaster at the place to which it is sent, to return the same within ten days unless called for.

24

OPPOSITION TO DISCHARGE.

A creditor opposing the application of a bankrupt for discharge shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file his specification of the grounds of his opposition, in writing, within ten days thereafter, unless the time shall be enlarged by order of the district court in the case, and the court shall thereupon make an order as to the entry of said case for trial on the docket of the district court, and the time within which the same shall be heard and decided.

25

SECOND AND THIRD MEETING OF CREDITORS.

Whenever any bankrupt shall apply for his discharge, within three months from the date of his

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* § 5039, R. S. † §§ 5039, 5041, R. S.

eing adjudged a bankrupt, under the provisions f the twenty-ninth section* of the act, the court ay direct that the second and third meetings f creditors of said bankrupt required by the wenty-seventh and twenty-eighth sections† of said ct shall be had on the day which may be fixed n the order of notice for the creditors to appear nd show cause why a discharge should not be ranted such bankrupt; and the notices of such meeting shall be sufficient if it be added to the notice to show cause, that the second and third meetings of said creditors shall be had before the register upon the same day that cause may be shown against the discharge, or upon some previous day or days.

26

APPEALS.

Appeals in equity from the district to the circuit court, and from the circuit to the Supreme Court of the United States, shall be regulated by the rules governing appeals in equity in the courts of the United States. Any supposed creditor who takes an appeal to the circuit court from the decision of the district court rejecting his claim, in whole or in part, according to the provisions of the eighth section of the act, shall give notice of his intention to enter the appeal within ten days from the entry of the final decision of the district court upon his claim; and he shall file his appeal in the clerk's office of the circuit court within ten

* § 5108 R. S. † §§ 5092, 5093, R. S.

days thereafter, setting forth a statement in writing of his claim in the manner prescribed by said section; and the assignee shall plead or answer thereto in like manner within ten days after the statement shall be filed. Every issue thereon shall be made up in the court, and the cause placed upon the docket thereof, and shall be heard and decided in the same manner as other actions at law.

27

IMPRISONED DEBTOR.

If at the time of preferring his petition the debtor shall be imprisoned, the court, upon his application, may order him to be produced upon *habeas corpus* by the jailor, or any officer in whose custody he may be, before the register, for the purpose of testifying in any matter relating to his bankruptcy; and if committed after the filing of his petition upon process in any civil action founded upon a claim provable in bankruptcy, the court may, upon like application, discharge him from such imprisonment. If the petitioner, during the pendency of the proceedings in bankruptcy, be arrested or imprisoned upon process in any civil action, the district court, upon his application, may issue a writ of *habeas corpus* to bring him before the court, to ascertain whether such process has been issued for the collection of any claim provable in bankruptcy, and, if so provable, he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge, the court shall cause notice to be served

upon the creditor, or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order.

28

DEPOSIT AND PAYMENT OF MONEYS.

The district court in each district shall designate certain national banks, if there are any within the judicial district, or if there are none, then some other safe depository, in which all moneys received by assignees or paid into court in the course of any proceedings in bankruptcy shall be deposited; and every assignee and the clerk of said court shall deposit all sums received by them, severally, on account of any bankrupt's estate, in one designated depository; and every clerk shall make a report to the court of the funds received by him, and of deposits made by him, on the first Monday of every month. On the first day of each month, the assignee shall file a report with the register, stating whether any collections, deposits, or payments have been made by him during the preceding month, and if any, he shall state the gross amount of each. The register shall enter such reports upon a book to be kept by him for that purpose, in which a separate account shall be kept with each estate; and he shall also enter therein the amount, the date, and the expressed purpose of each check countersigned by him. No moneys so deposited shall be drawn from such depository unless upon a check or warrant, signed by the clerk of the court, or by an assignee, and countersigned by the judge of the court, or one

of the registers designated for that purpose, stating the date, the sum, and the account for which it is drawn; and an entry of the substance of such check or warrant, with the date thereof, the sum drawn for, and the account for which it is drawn, shall be forthwith made in a book kept for that purpose by the assignee or the clerk; and all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate. A copy of this rule shall be furnished to the depository so designated, and also the name of any register authorized to countersign said checks.

29

PREPAYMENT OR SECURITY OF FEES.

The fees of the register, marshal, and clerk shall be paid or secured in all cases before they shall be compelled to perform the duties required of them by the parties requiring such service; and in the case of witnesses their fees shall be tendered or paid at the time of the service of the summons or subpœna, and shall include their traveling expenses to and from the place at which they may be summoned to attend. The court may order the whole, or such portion of the fees and costs in each case to be paid out of the fund in court in such case as shall seem just.

The funds deposited with the register, marshal, and clerk shall, in all cases where they come out of the bankrupt's estate, be considered as a part of such estate, and the assignee shall be charged therewith, and shall not be allowed for any dis-

ırsements therefrom, except upon the production ' proper vouchers from such officers, respectively, ıven after the due allowance of their respective ills.

30

FEES AND COSTS.

Clerks.

The fees of the clerk shall be the same as now llowed by law for similar services in the general ee-bill, section 828, Revised Statutes, except as ıerein provided; but no charge shall be made or filing any paper previously filed with the regis-er. Also,

For entering memoranda or minutes of register, each folio	$ 10
For sending notice to creditors by mail, each	15
For inserting notice in newspaper	50

(The necessary cost of advertising to be paid as an expense of the estate.)

For taxing the costs in each case	1 00
—and for each folio of taxed bill	10

Registers.

The following and no other fees shall be allowed to the register:

For filing and entry of the general order of reference, and for office rent, stationery, and other incidental expenses of proceedings, conducted in the usual office of the register, to be allowed once only in any cause	5 00

When the proceedings are not conducted in the usual office of the register, but in some other city or town, he shall be allowed for each day employed in going, attending, and returning..... $5 00

Also, in such case, traveling and incidental expenses of himself and of any clerk or other officer attending him, which expenses and fees shall be appropriated among the cases, as provided in section 5 of the act, or section 5125 of the Revised Statutes.

For each day's service while actually employed under a special order of the court, a sum to be allowed by the court, not exceeding..... 5 00

But only one *per diem* allowance to be made for a single day, and no duplication of such allowances to be made for different cases on the same day; and no other allowance shall be made for clerk hire except as above stated.

For every affidavit to any petition, schedule, or other proceeding in bankruptcy, except proof of debt by a creditor or his agent, for each oath and certifying the same..... 25

For examining petition and schedules and certifying to their correctness..... 3 00

For every warrant in bankruptcy, or other process, issued and directed to the marshal (not including warrants for payment of money or anything other than process)..... 2 00

For each day in which a general meeting of creditors is held, and attending same..	$3 00
For notification to assignee of his appointment	50
For assignment of bankrupt's effects	1 00
For every bond with sureties	1 00
For every application for a general meeting of creditors	1 00
For every summons or subpœna requiring the attendance of a bankrupt, a bankrupt's wife, or a witness for examination, for each person summoned	10
For taking depositions, including proofs of debts, and examination of bankrupt or his wife, for each folio	20
For certifying proof of debt as satisfactory	25
For copies of depositions and other papers, each folio	10
For each notice which the register may be required to send to or serve on any creditor (which shall include for postage and stationery)	15
For mileage in making personal service when necessary the same as allowed by law to the marshal.	
For inserting notice in newspaper when required	50
(Costs of advertising to be allowed as part of the expenses of the estate.)	
For each order for a general dividend ...	3 00
For computation of dividends	3 00
In addition thereto, for each creditor	10

For every judicial order made by a register, necessary or proper to be made by him, and not herein otherwise specially provided for, and not including matters merely ministerial	$1 00
For every discharge where there is no opposition	2 00
For auditing the accounts of assignees	1 00
—and for each additional hour necessarily employed therein, after the first hour.	1 00
For every certificate of question to the district court or judge, under sections four and six of the act, or sections 5009 and 5010 of the Revised Statutes	1 00
For preparing such certificate, each folio	20
For each folio of memorandum sent to the clerk	10
For countersigning each check of assignee,	10
For filing every paper not previously filed by the clerk, and marking and identifying every exhibit	10

(Fees paid by creditors for establishing their debts shall be entitled to rank with other fees and costs in the case, under section 5101, Revised Statutes.)

Marshals.

The fees of the marshal shall be the same as are allowed for similar services by the general fee-bill in section 829 of the Revised Statutes, as modified by section 5126, including additional fees allowed by the latter section for distinct services; but no allowances shall be made under the

ıst clause of section 5126, commencing with the 'ords "For cause shown."

'he marshal shall be allowed for each hour necessarily employed in making inventory of bankrupt's property.....	$1 00
—and for each folio of inventory.....	20
For each hour actually and necessarily employed in personal attention in taking care of bankrupt's property.....	1 00

(No other allowance to be made for custody of property, except for actual disbursements, which shall in all cases be passed upon by the court.)

Assignees.

The fees and allowances of assignees shall be as prescribed and provided for in sections 5099 and 5100 of the Revised Statutes; provided that, in addition to disbursements made, no allowance shall be made other than the commissions provided for in section 5100, except as hereinafter specified; and said commissions shall be calculated but once upon the amount of moneys received and paid, and not upon both the receipt and payment thereof. Besides which, there shall be allowed to the assignee as follows:

For serving or sending notices to creditors, or publishing the same, when required to be done by the assignee, the same amount allowed to the register for like services.

For each hour necessarily employed in making inventory or supplemental inventory of bankrupt's property, or verifying marshal's inventory	$1 00
For each folio of inventory or supplemental inventory made by assignee	20
For all services in designating the exempt property of a bankrupt, and filing report thereon	5 00
For attending a general meeting of creditors	3 00
For every deed for real estate sold	2 00
For drawing and filing each monthly report	1 00
For drawing and filing each quarterly report, not exceeding four, unless specially allowed	5 00
For each general account submitted to a creditors' meeting, not exceeding two, unless specially allowed	10 00
For all services in paying a general dividend, or executing an order of final distribution, and making report thereon, including all disbursements	5 00
In addition, for each creditor to whom a dividend is paid	25

Amendment.

"It being found that, in certain special cases requiring great care and exertion on the part of assignees in bankruptcy, the fees and allowances now provided are insufficient, it is therefore hereby

Ordered, That in such cases as are above mentioned, the district judge be, and is hereby, authorized, by and with the advice and concurrence of the circuit justice or judge, to make such additional allowance to the assignee or trustee, or to both or either of them, if there be more than one, as in his judgment shall be a fair and just compensation for his or their services, having regard to the amount of assets, the amount of labor required, and the special circumstances of the case; and that so much of General Order 30 as conflicts herewith be repealed. [*Promulgated March 17, 1877, 93 U. S., vii.*]

Witnesses and Jurors.

The fees of witnesses and jurors shall be the same as prescribed in the general fee-bill, in sections 848 and 852 of the Revised Statutes.

Attorneys.

No allowance shall be made against the estate of the bankrupt for fees of attorneys, solicitors, or counsel, except when necessarily employed by the assignee, when the same may be allowed as a disbursement; and no allowance shall be made to the assignee for custody of the bankrupt's property, except necessary disbursements in relation thereto. The necessity and reasonableness of disbursements shall in all cases be passed upon by the court.

Any money received by either of the officers mentioned, in excess of lawful fees or compensation, shall be ordered by the judge to be paid into

court, and such order may be enforced, if necessary, by attachment as for contempt.

No bankrupt's discharge shall be refused or delayed by reason of the non-payment of any fee except the fee for his certificate of discharge.

Taxation of Costs.

Ten days before the day fixed for the consideration of the assignee's final account, or at any other time fixed by the court, on its own motion, or on the application of any person interested, the clerk, marshal, and register shall file with the clerk a statement of fees, including prospective fees for final distribution, which shall exhibit, by items, each service and the fee charged for it, and the amount received. Said clerk shall tax each fee-bill, allowing none but such as are provided for by these rules, which taxation shall be conclusive, reserving to any party interested exceptions to the bills as taxed, which shall be decided by the court. The office of auditor is hereby discontinued.

31

COSTS IN CONTESTED ADJUDICATIONS.

In cases of involuntary bankruptcy, where the debtor resists an adjudication, and the court, after hearing, shall adjudge the debtor a bankrupt, the petitioning creditor shall recover, to be paid out of the fund, the same costs that are allowed by law to a party recovering in a suit in equity; and in case the petition shall be dismissed, the debtor may recover like costs from the petitioner.

When a debtor shall be adjudged a bankrupt

on the application of a creditor, and shall be required under the provisions of the act to furnish a schedule of his creditors, and an inventory and valuation of his estate, the court, if the estate is large and the required schedule and inventory are likely to be voluminous or complicated, or other good reason exist, may, on the application of such debtor, allow him the services of a clerk or accountant to aid him therein, at such rate of compensation, not to exceed five dollars per day, as the court may deem reasonable.

32

AS TO FORMS AND SCHEDULES.

The several forms specified in the schedules annexed to the former general orders for the several purposes therein stated shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case. The tabular forms hereto annexed shall be used respectively by the several officers named in section nineteen of the amendatory act of June 22, 1874, in making the returns required by said section. In all cases where, by the provisions of the act, a special order is required to be made in any proceeding, or in any case instituted under the act in a district court of the United States, such order shall be framed by the court to suit the circumstances of the particular case; and the forms hereby prescribed shall be followed as nearly as may be, and so far as the same are applicable to the circumstances requiring such special order. In proceedings in equity, instituted for the purpose

of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be. In proceedings at law, instituted for the same purpose, the rules of the circuit court regulating the practice and procedure in cases at law shall be followed as nearly as may be. But the court, as the judge thereof, may, by special rule in any case, vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing.

33

OMISSIONS AND AMENDMENTS.

Whenever a debtor shall omit to state in the schedules annexed to his petition any of the facts required to be stated concerning his debts or his property, he shall state, either in its appropriate place in the schedules or in a separate affidavit to be filed with the petition, the reason for the omission, with such particularity as will enable the court to determine whether to admit the schedules as sufficient, or to require the debtor to make further efforts to complete the same according to the requirements of the law; and in making any application for amendment to the schedules, the debtor shall state under oath the substance of the matters proposed to be included in the amendment, and the reasons why the same had not been incorporated in his schedules as originally filed, or

as previously amended. In like manner, he may correct any statement made during the course of his examination.

34

PROOF OF DEBTS.

Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a copartnership, it must appear on oath that the deponent is a member of the creditor firm; when made by an agent, the reason the deposition is not made by the claimant in person must be stated; and when made to prove a debt due to a corporation, and the corporation has no such officer as cashier or treasurer, the deposition may be made by the officer whose duties most nearly correspond to those of cashier or treasurer. Depositions to prove debts existing in open account shall state when the debt became or will become due; and if it consists of items maturing at different dates, the average due date shall be stated; in default of which it shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account nor any judgment rendered thereon. Proofs of debt received by any assignee shall be delivered to the register to whom the cause is referred. The register may decline to file any deposition until the fee for filing the same is paid. When a proof of debt is sent by mail to the register, and it shall be accompanied by the fee for filing it, and the fee for sending a notice to a creditor, the register shall acknowledge the receipt of

it, and state the amount at which he has entered it, and if it shall be insufficient or unsatisfactory to the register he shall state the reason.

Any creditor may file with the register a request that all notices to which he may be entitled shall be addressed to him at any place, to be designated by the post-office box or street number, as he may appoint, and thereafter, and until some other designation shall be made by such creditor, all notices shall be so addressed; and in other cases notices shall be addressed as specified in the proof of debt.

Claims which have been assigned before proof shall be supported by a deposition of the owner at the time of the commencement of proceedings, setting forth the true consideration of the debt, and that it is entirely unsecured, or, if secured, such deposition shall set forth the security, as is required in proving secured claims.

Upon filing with the register satisfactory proof of the assignment of a claim proved and entered on the register's docket, the register shall immediately give notice by mail, to the original claimant, of the filing of such proof of assignment.

And if no objection be entered within ten days, he shall make an order subrogating the assignee to the original claimant.

If objection be made within the time specified, or within such further time as may be granted for that purpose, the register shall certify the objection into court for determination. The claims of persons contingently liable for the bankrupt may be proved in the name of the creditor, when known by the party contingently liable.

When the name of the creditor is unknown, such claims may be proved in the name of the party contingently liable; but no dividend shall be paid upon such claim, except upon satisfactory proof that it will diminish, *pro tanto*, the original debt. The execution of any letter of attorney to represent a creditor, or of an assignment of claim after proof, or of the consent of a creditor to a bankrupt's discharge, may be proved or acknowledged before a register in bankruptcy, or a United States circuit court commissioner. When executed on behalf of a copartnership, or of a corporation, the person executing the instrument shall make oath that he is a member of the firm, or duly authorized officer of the corporation, on whose behalf he acts.

When the party executing is not personally known to the officer taking the proof or acknowledgment, his identity shall be established by satisfactory proof.

When the assignee or any creditor shall desire the re-examination of any claim filed against the bankrupt's estate, he may apply by petition to the register to whom the cause is referred, for an order for such re-examination; and thereupon the register shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail, addressed to the creditor.

At the time appointed, the register shall take the examination of the creditor, and of any witnesses that may be called by either party; and if it shall appear from such examination that the claim ought to be expunged or diminished, the

register, if no objection be made, may order accordingly. If objection be made, the register shall require the parties then, or within a time to be fixed for that purpose, to form an issue to be certified into court for determination.

If the petitioner is in default in making up said issue, the petition shall be dismissed; if the creditor whose claim is re-examined is in default in making said issue, the claim may be diminished or expunged by the register.

All orders thus made by the register may be reviewed by the court on special petition, and upon showing satisfactory cause for such review.

35

TRIAL BEFORE MARSHAL.

If the debtor, under the provisions of section fourteen of the amendatory act relating to proceedings in bankruptcy, approved June 22, 1874, shall elect to have a trial of the facts before the marshal, he shall make such election in writing, and file the same with the clerk of the court; and thereupon the court, on application of the debtor, may award the *venire facias* in said section prescribed, upon and by virtue of which the marshal shall summon twenty-four good and lawful men, inhabitants of the vicinity of the place of trial, and indifferent between the parties, from whom to select a jury to try the said facts; and the names of the persons so summoned shall be drawn by lot to make the said jury, and each party shall be entitled to challenge four persons peremptorily; and if a sufficient number of jurors unchallenged and

ee from exception shall not appear to make the ull panel of twelve men (or such less number as ne parties may agree upon), to try the said ause, the marshal shall complete the number by orthwith summoning other proper persons for the urpose. And any person summoned by the marhal to sit on said jury, and failing to appear withut sufficient excuse, shall be returned by the narshal and subject to be fined by the court.

The petitioning creditor shall be deemed the actor, give due notice of trial, and have the opening and close before the jury. Subpœnas may be issued to witnesses, and objections to evidence shall be decided by the marshal presiding at the trial, subject to review by the court. The trial shall be had upon the petition to have the debtor declared a bankrupt, and no other pleadings shall be necessary. The debtor may, on his part, prove any fact or state of facts which will entitle him to have the case dismissed. The jury, if desired, shall find a special verdict upon any point or question of fact stated for that purpose in writing by either party before the case shall have been submitted to them. The verdict shall be signed by the foreman of the jury and countersigned by the marshal, who shall immediately return the same to the court with the venire, and any points or questions raised and decided by him at the trial. The court, for good and legal cause shown, may set aside the verdict and award a new venire as often as occasion shall require.

36

COMPOSITION UNDER SECTION 17 OF AMENDATORY ACT.

If at any time after the filing of a petition for an adjudication in bankruptcy, a petition duly verified be filed by the debtor or bankrupt, or by any creditor of such debtor or bankrupt, setting forth that a composition has been proposed by such debtor or bankrupt, and that he verily believes that such proposed composition would be accepted by a majority in number, and three-fourths in value of the creditors of such debtor or bankrupt, in satisfaction of the debts due from such debtor or bankrupt, the court shall forthwith order a meeting of the creditors to be called to consider of the said proposition as provided in the 17th section of the said amendatory act, whereupon such proceedings shall be had as are therein directed. The register acting in the case, or, if no register has been assigned, a register to be designated by the court, shall, at the time and place specified in the notice for holding such meeting, hold and preside at the same, and report to the court the proceedings thereof, with his opinion thereon; upon the filing of which the clerk shall give the notices to creditors required by said section, and the court shall, at the time therein fixed, proceed to hear and determine the matter as in said section is prescribed.

In like manner, additional meetings in relation to such proposed composition, or any modification thereof, may, upon like application, be called and held, and the proceedings returned in like manner.

37

REFERENCE TO SECTIONS OF ACT, ETC.

All orders referring specifically to any section or sections of the original bankrupt act, shall be deemed and construed to refer to the corresponding sections respectively, in the Revised Statutes of the United States; for example, Order IX, in referring to sections 12 and 13 of the act, shall be construed to refer to sections 5033 and 5064 respectively, of the Revised Statutes; and so of the rest. And all forms heretofore prescribed shall be adapted to any modification of the law, or of these orders.

Amendment, October Term, 1874.

1. The petition for a composition with creditors required by Order XXXVI, must set forth that the petitioner verily believes that the proposed composition will be accepted by two-thirds in number and one-half in value of the creditors of the debtor or bankrupt, instead of a majority in number and three-fourths in value of such creditors, and the said order is hereby amended accordingly.

2. The deposit of $50 required to be made as security for the fees of the register, shall be delivered by the clerk to the register to whom the case is referred, and be by him accounted for at the termination of the case.

3. Order V is amended by striking out the words in lines 20 and 21, "and taxing costs in any of the proceedings."

RULES OF THE CIRCUIT COURTS

IN BANKRUPTCY.

1

When the "General Superintendence and Jurisdiction" authorized to be exercised by the second section of the "Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, is intended to be invoked, the party so intending shall file in the office of the clerk of the circuit court a petition verified by affidavit, setting forth briefly the facts of the case and the relief sought, and he shall, at the same time, deposit such sum of money as the clerk shall deem necessary to cover the costs, or in lieu thereof the clerk may, in his discretion, take an undertaking which he shall deem sufficient for that purpose.

The clerk shall thereupon, in a book to be kept for such proceedings, docket the case and enter an order that the adverse party, within a time to be fixed by the order, shall file an answer verified by affidavit, if he desire to answer, and a copy of such order, with a caption stating the style of the case, and that it is bankruptcy, shall thereupon be served by the marshal upon such adverse party.

The marshal's return of service shall be in the following form: A. B. vs. C. D., Circuit Court, U. S. —— District, Michigan, in Bankruptcy. I served the order in this case, dated —— day of ———, A. D. 18—, by (state the manner of service) E. F., Marshal.

Upon filing the answer the petitioner may reply, under oath, within a time to be fixed by the clerk upon his application.

2

The counsel of the petitioner, at the time of filing the petition, shall file also a brief, setting forth the points and authorities intended to be relied upon. If the counsel for the adverse party desire to submit a brief, he shall file it within the time fixed for the filing of the answer.

The counsel for the petitioner may submit a closing brief within a time to be fixed by the clerk.

The time fixed by the clerk as aforesaid, may be enlarged by the written agreement of the parties or their counsel, filed with the clerk.

3

When the case is ready to be submitted, the clerk shall transmit the papers to the circuit judge.

4

If either party shall desire to be heard in oral argument, he shall notify the other party and the circuit judge as early as may be, and thereupon the judge will fix a time and place for such argument.

5

When the decision of the judge is made the clerk shall enter it in the proper book, and transmit a certified copy to the district court.

NOTE.—These rules are not intended to affect the right as given by the section referred to, to file a bill in equity when that course shall be preferred. In such cases these rules will apply as far as applicable, and such special orders in addition will be made in each case as may be deemed proper.

6

The petition mentioned in the foregoing rule, No. 1, shall be filed within ten days from the entering of the order complained of, unless the time shall be extended by the district judge by an order filed with the clerk within the said ten days. A failure to file the petition in time shall be held to be a waiver of the right to file the same, and none shall be filed thereafter.

RULES OF THE DISTRICT COURTS

IN BANKRUPTCY.

1

REFERENCE TO REGISTER.

Petitions in cases of voluntary bankruptcy, required by General Order No. 4, to be referred to one of the registers, shall, unless otherwise specially ordered, be referred to the register for the Congressional district within which the petitioner resides, except where the petitioner resides in the counties of Branch, Mackinac and Cheboygan, the reference shall be to the register for the First Congressional district, and where he resides in the county of Eaton, the reference shall be to the register of the Fourth Congressional district.

2

PUBLICATION OF NOTICES.

All notices of proceedings in bankruptcy required to be published in the city of Detroit shall be published in the daily editions of at least two of the following papers: the *Detroit Post and Tribune, Detroit Free Press, Detroit Evening Telegraph,* and *Detroit Evening News.*

Where the petitioner, in cases of voluntary

bankruptcy, resides in the Second Congressional district, such notices shall be published in the *Kalamazoo Telegraph* and the *Kalamazoo Gazette*; where he resides in the Fourth Congressional district, in the *Grand Rapids Daily Eagle* and *Grand Rapids Democrat*, unless otherwise specially ordered.

Notices to be published in pursuance of warrants according to form No. 6, or form No. 59, shall be published twice in each newspaper designated in the warrant.

3

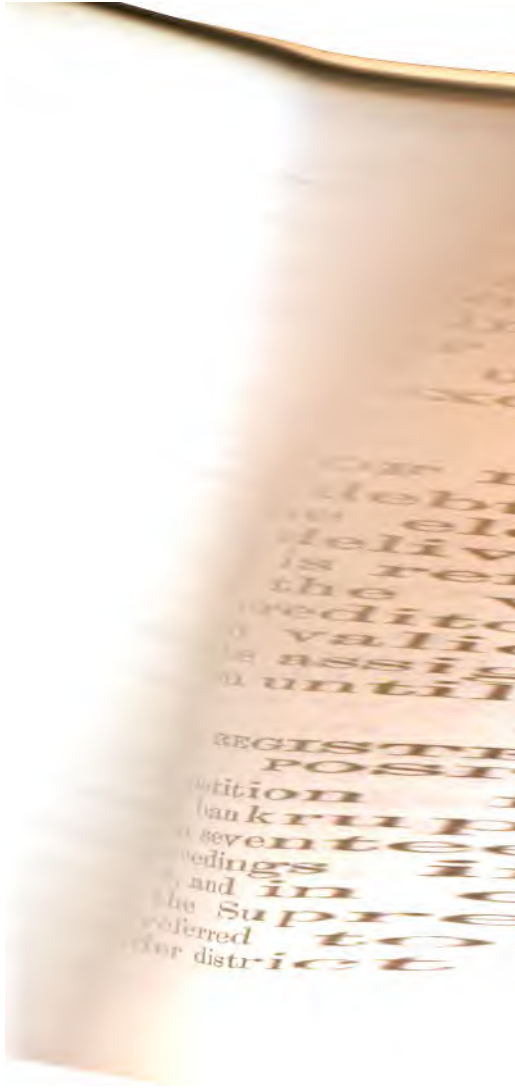
OFFICIAL DEPOSITORIES.

The Second National Bank and the American National Bank of Detroit, the First National Bank of Grand Rapids, and the Michigan National Bank of Kalamazoo, are hereby designated as deposit banks under General Order No. 28. Other banks may be designated by special order. The register before whom the case is pending is hereby designated to countersign cheques under said order, unless some other register shall be designated by special order.

4

REFERENCE OF PETITIONS FOR DISCHARGE.

Wherever a petition for discharge shall be filed the clerk shall enter a special order referring it to the register in charge of the case, to make an order to show cause thereon, and to sit in chambers on the return thereof, and pass the last examination of the bankrupt, if there is no opposition, and certify to the court whether the bank-



rupt has, in all things, conformed to all requirements of the act.

In rendering these services the register will be considered as acting under the special order so as to entitle him to be compensated for such service under that clause in section 47 of the act which gives to the register for every day's service while actually employed under a special order of the court, a sum not exceeding $5 to be allowed by the court.

5

PROOF OF DOUBTFUL CLAIMS.

All proofs of debt which shall be made and verified prior to the election or appointment of an assignee shall be delivered or sent to the register to whom the case is referred. If the register entertains doubts of the validity of any claim or of the right of a creditor to prove it, and is of opinion that such validity or right ought to be investigated by the assignee, he may postpone the proof of the claim until the assignee is chosen.

6

REFERENCE TO REGISTER OF PETITION FOR COMPOSITION.

Whenever a petition for composition shall be filed in a case in bankruptcy pursuant to the provisions of section seventeen of the amendatory act relating to proceedings in bankruptcy, approved June 22d, 1874, and in compliance with General Order 36 of the Supreme Court, such petition shall be referred to the proper register in bankruptcy under district court rule one in bank-

ruptcy. Such register shall forthwith call a meeting of the creditors at his office to consider the proposition as provided in the seventeenth section of said amendatory act, and give the notice to creditors required by said section, by depositing in the post-office, postage paid, a notice addressed to each known creditor, at his reported place of residence, unless the court shall by special order otherwise direct.

7

SETTLEMENT OF ASSIGNEE'S ACCOUNT IN CASE OF COMPOSITION.

In cases pending before a register under the general order of reference, where a resolution accepting a composition proposed in bankruptcy under the provisions of section seventeen of the act approved June, 1874, has been recorded under the order of the court, the clerk shall certify the fact to the register, and if an assignee has been appointed in the cause, the register shall appoint a day for the consideration of the assignee's account, of which appointment notice shall be given to the bankrupt. At the time appointed, unless the same shall be adjourned, and then on the day to which the consideration of the account may be adjourned, the register shall proceed to audit the account in the usual manner. If, after paying all costs, charges and expenses duly allowed, a balance of money or any property shall remain in the hands of the assignee, such balance of money shall, unless otherwise specially provided by the deed of confirmation, or otherwise directed by the court, be paid to said bankrupt, and such property

elivered or conveyed to him by the assignee. If he sum remaining in the hands of the assignee be nsufficient to pay the costs, charges, and expenses vhich have been allowed, or the property in his ıands be insufficient out of which to realize the ıum necessary to pay such costs, charges and expenses, the amount of the deficiency shall be certified into court, and notice thereof served upon the bankrupt, requiring him to show cause before the court, on a day specified, why an execution should not be issued against him for the sum remaining due and unpaid.

8

PROCEEDINGS UPON SPECIFICATIONS AGAINST DISCHARGE.

In cases pending before a register, under the special order of reference of the petition of a bankrupt for a discharge, and where any creditors shall have entered an appearance to oppose, and filed specifications of the grounds of such opposition, unless a demand for a trial by jury be made and filed with the register, either party may take testimony in support of or in opposition to such discharge before the register, upon order and notice of the taking thereof. The testimony so taken shall be certified into court with the register's certificate of his proceedings under the order of reference, and at the request of the objecting creditor or of the bankrupt he shall certify into court any general examination of the bankrupt taken before him which has been read to and subscribed by the bankrupt.

9

EXAMINATION OF INVOLUNTARY PETITIONS.

Upon filing a petition in a case of involuntary bankruptcy, the register in bankruptcy for the Congressional district in which the debtor resides is authorized and empowered to examine such petition, and if it shall appear that sufficient grounds exist therefor, such register shall, by indorsement on such petition, signify the fact, and thereupon the clerk of the court shall enter an order requiring the debtor to appear and show cause pursuant to the provisions of the "bankrupt act," in such case made and provided.

10

OATHS AND AFFIDAVITS.

Jurats and affidavits to be used in this court may be verified before the clerk of any court of record, or before any notary public, provided, however, that when such clerk or notary is a nonresident of the district, his signature shall be attested by his official seal.

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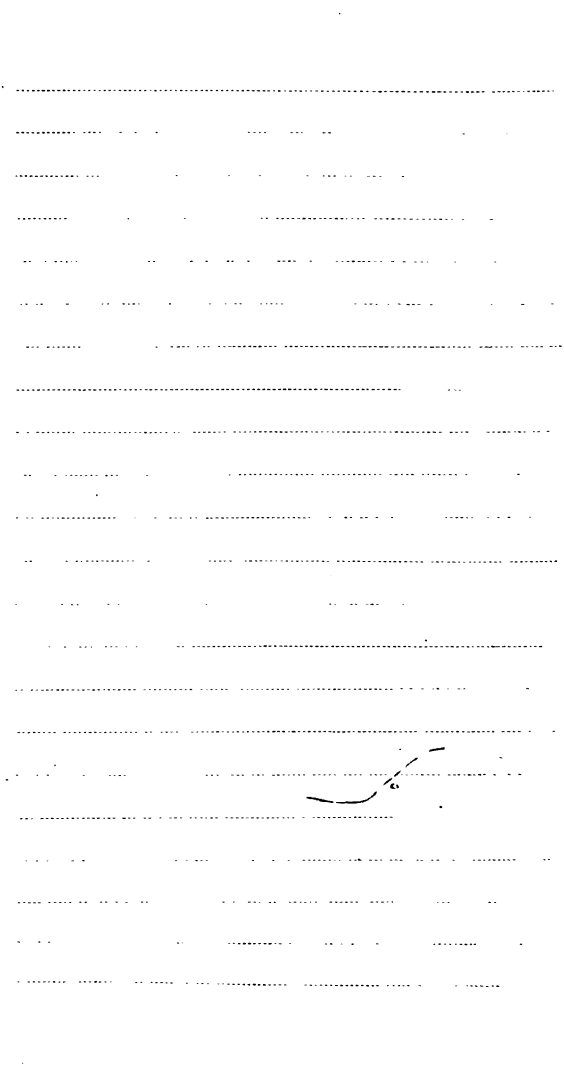

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